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17 Attorneys for Defendant  
 GUARANTEED RATE, INC.

18  
 19 UNITED STATES DISTRICT COURT  
 20 NORTHERN DISTRICT OF CALIFORNIA  
 21 SAN FRANCISCO DIVISION

22 DANIELLE KESTERSON,  
 23  
 24 Plaintiff,  
 25 v.  
 26 GUARANTEED RATE, INC.,  
 27 Defendant.  
 28

Case No. 15-cv-05430-EMC  
 e-filing case

**CORRECTED STIPULATION AND  
 [PROPOSED] ORDER GRANTING  
 PLAINTIFF LEAVE TO FILE  
 SECOND AMENDED COMPLAINT  
 FOR DAMAGES (ADDING  
 RETALIATION CLAIM UNDER  
 CAL. LABOR CODE § 1102.5)**

McGuinn, Hillsman  
 & Palefsky  
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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 Amended Complaint for  
5 Damages to add a claim for retaliation under Cal. Labor Code §1102.5, attached  
6 hereto as Exhibit A.
- 7 2. Defendant's responsive pleading shall be due twenty-one (21) days after the  
8 Second Amended Complaint for Damages is deemed filed.
- 9 3. This stipulation should not be construed as any admission by Defendant and/or  
10 prejudice Defendant's ability to challenge the sufficiency of the Second Amended  
11 Complaint for Damages.

12  
13 DATED: March 24, 2016

WELTER LAW FIRM, P.C.  
Attorneys for Defendant GUARANTEED RATE, INC.

14  
15 By: /s/ Laura B. Thomasian  
16 LAURA B. THOMASIAN

17  
18 DATED: March 24, 2016

McGUINN, HILLSMAN & PALEFSKY  
Attorneys for Plaintiff DANIELLE KESTERSON

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20 By: /s/ Jeannette A. Vaccaro  
21 JEANNETTE A. VACCARO



**EXHIBIT A**

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6 Attorneys for Plaintiff  
DANIELLE KESTERSON

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
11

12 DANIELLE KESTERSON,  
13 Plaintiff,  
14 v.  
15 GUARANTEED RATE, INC.,  
16 Defendants.  
17

CASE NO.: 15-CV-05430-EMC  
e-filing case

**SECOND AMENDED COMPLAINT  
FOR UNLAWFUL FAILURE TO PAY  
WAGES; FAILURE TO PAY  
OVERTIME COMPENSATION;  
FAILURE TO PAY MEAL AND  
REST PERIOD COMPENSATION;  
FAILURE TO FURNISH ACCURATE  
WAGE STATEMENTS; FAILURE  
TO MAINTAIN PAYROLL  
RECORDS; FAILURE TO PAY  
WAGES UPON TERMINATION;  
WAITING TIME PENALTIES;  
RETALIATION; AND UNFAIR  
COMPETITION**

**JURY TRIAL DEMANDED**

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24 PLAINTIFF DANIELLE KESTERSON COMPLAINS AND ALLEGES AS FOLLOWS:

25 **I. JURISDICTION AND VENUE**

26 1. Plaintiff brings this action pursuant to the Fair Labor Standards Act (“FLSA”) – 29  
27 U.S.C. §§ 207, 216, the California Labor Code, and the California Business and Professions Code.  
28 This court has jurisdiction of the action pursuant to 28 U.S.C. § 1331, and over the state claims



1 out eight times a day to reflect that they had taken a 10-minute break in the morning, a 60-minute  
2 lunch break, and a 10-minute break in the afternoon, regardless of whether those breaks were  
3 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  
11 simply clocked-in when she arrived in the morning and clocked-out when she left the office in the  
12 evening. Kesterson rarely logged the hours of work she did from home in the evenings.

13 14. Thereafter, Carroll began manually changing Kesterson's timecard to reflect that  
14 breaks were taken and that she was only working 40 hours per week. Carroll also began retaliating  
15 against Kesterson for her complaints by changing the terms and conditions of her employment and  
16 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.

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

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





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 penalties pursuant to Cal. Labor Code § 558 and other applicable provisions of the Cal. Labor  
7 Code and other applicable laws and regulations.

8 28. As a result of Defendant's unlawful acts, Plaintiff has been deprived of overtime  
9 compensation in an amount to be determined at trial, and is entitled to recovery of such amounts,  
10 plus interest thereon, under Cal. Labor Code § 1194.

11 29. By violating Cal. Labor Code § 510, Defendant is liable for attorneys' fees and  
12 costs under Cal. Labor Code § 1194.

13 WHEREFORE, Plaintiff prays for relief as set forth below.

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15  
16 **THIRD CAUSE OF ACTION**  
17 **Failure To Pay Overtime Compensation**  
18 **(Fair Labor Standards Act ("FLSA") – 29 U.S.C. §§ 207, 216)**

19 30. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 29 above, as  
20 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  
24 U.S.C. § 203(d).

25 32. Defendant routinely required Plaintiff to work more than eight hours per day.  
26 Defendant routinely required Plaintiff to work six days per week. Defendant willfully failed and  
27 refused to pay Plaintiff the overtime compensation required by the FLSA and other applicable  
28

1 laws 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 35. Plaintiff has been deprived of her rightfully earned and legally required overtime  
8 compensation as a direct and proximate result of Defendant's failure and refusal to pay said  
9 compensation. Plaintiff is entitled to recover such amounts, plus interest thereon, attorneys' fees  
10 and costs.

11 36. Based on Defendant's conduct as alleged herein, Defendant is liable for liquidated  
12 damages pursuant to 29 U.S.C. § 216(b) and other applicable laws and regulations.

13 37. As a result of Defendant's unlawful acts, Plaintiff has been deprived of overtime  
14 compensation in an amount to be determined at trial, and is entitled to recovery of such amounts,  
15 plus interest thereon.

16 38. By violating 29 U.S.C. § 207, Defendant is liable for attorneys' fees and costs  
17 under 29 U.S.C. §216(b).

18 WHEREFORE, Plaintiff prays for relief as set forth below.

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21 **FOURTH CAUSE OF ACTION**  
22 **Failure To Pay Meal And Rest Period Compensation**  
23 **(Cal. Labor Code § 226.7)**

24 39. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 38 above, as  
25 though fully set forth herein.

26 40. Defendant routinely failed and refused to provide Plaintiff with meal and rest  
27 periods during her work shifts, and failed and refused to compensate Plaintiff when she did work  
28

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 and costs, plus statutory and civil penalties pursuant to Cal. Labor Code § 558 and the other  
7 applicable laws and regulations.  
8

9 WHEREFORE, Plaintiff prays for relief as set forth below.

10 **FIFTH CAUSE OF ACTION**  
11 **Failure To Furnish Accurate Wage Statements**  
12 **(Cal. Labor Code §§ 226 & 226.3)**

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 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,  
19 the total hours worked by the employee, then the employee is entitled to recover the greater of all  
20 actual damages or \$50 for the initial violation and \$100 for each subsequent violation, up to  
21 \$4,000.  
22

23 44. Defendant knowingly and intentionally failed to furnish Plaintiff with timely,  
24 itemized statements showing the total hours worked, as required by Cal. Labor Code § 226(a). As  
25 a result, Plaintiff incurred injury, including but not limited to the ability to accurately calculate  
26 overtime owed. Therefore, Defendant is liable to Plaintiff for her actual damages or the amounts  
27 provided by Cal. Labor Code § 226(b).  
28

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**  
6 **(Cal. Labor Code §§ 226, 1174 and 1174.5)**

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 **SEVENTH CAUSE OF ACTION**  
16 **Failure To Pay Wages On Termination**  
17 **(Cal. Labor Code § 201)**

18 49. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48 above, as  
19 though fully set forth herein.

20 50. Pursuant to Cal. Labor Code § 201, Defendant was required to promptly pay  
21 Plaintiff all wages due and owing to her upon her termination. As set forth above, Defendant  
22 willfully refused to pay Plaintiff all of the compensation that was due to her following the  
23 termination of her employment. Defendant thereby violated Cal. Labor Code § 201.

24 51. By violating Cal. Labor Code § 201, Defendant is liable in full for all wages due  
25 and owing to Plaintiff, plus interest thereon, and for attorneys' fees and costs under Cal. Labor  
26 Code § 218.5.

27 WHEREFORE, Plaintiff prays for relief as set forth below.

28 ///

1 **EIGHTH CAUSE OF ACTION**  
2 **Waiting Time Penalties**  
3 **(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**  
16 **Retaliation**  
17 **(Cal. Labor Code § 1102.5)**

18 56. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 55 above, as  
19 though fully set forth herein.

20 57. California Labor Code § 1102.5 prohibits employers from discharging,  
21 constructively discharging, retaliating or in any manner discriminating against any employee for  
22 disclosing information to a person with authority over the employee, or to another employee who  
23 has authority to investigate, discover, or correct the violation or noncompliance, where the  
24 employee has reasonable cause to believe that the information discloses a violation of state or  
25 federal statute, or a violation or noncompliance with a state or federal rule or regulation.

26 58. Defendant's conduct as alleged above in paragraphs 14 and 17 constituted unlawful  
27 retaliation in violation of California Labor Code § 1102.5. Defendant retaliated against Plaintiff  
28 on account of her objections to being required to falsely register meal and rest breaks and work  
unpaid overtime.



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1. For compensatory damages;
2. For back pay—including overtime compensation, and interest thereon, according to proof;
3. For liquidated damages under 29 U.S.C. § 216;
4. For wage statement violation penalties under Cal. Labor Code §§ 226 and 226.3;
5. For waiting time penalties under Cal. Labor Code § 203;
6. For restitution pursuant to Cal. Business and Professions Code §§ 17200-17205;
7. For penalties pursuant to Cal. Business & Professions Code § 17202;
8. For emotional distress damages;
9. For punitive damages;
10. For an award of interest, including prejudgment interest, at the legal rate;
11. For an award of attorneys’ fees;
12. For costs of suit incurred;
13. For such other and further relief as the Court may deem just and proper.

**PLAINTIFF DEMANDS A JURY TRIAL**

DATED: March 24, 2016

MCGUINN, HILLSMAN & PALEFSKY  
Attorneys for Plaintiff DANIELLE KESTERSON

By: /s/ Jeannette A. Vaccaro  
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