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17 Plaintiffs' Counsel

18 UNITED STATE DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA

20 FELICIA CIPOLLA and ALEXIS WOOD,
21 individually and on behalf of all others
22 similarly situated,

23 Plaintiffs,

24 vs.

25 TEAM ENTERPRISES, LLC; NEW
26 TEAM LLC, doing business as TEAM
27 ENTERPRISES,

28 Defendants.

Case No.

COMPLAINT FOR DAMAGES

[CLASS ACTION]

1. 29 U.S.C. § 216(b) (FLSA Wages)
2. Labor Code §§ 510, 1194 (Cal. Wages)
3. Labor Code §§ 226.7, 512 (Meal Breaks)
4. Labor Code § 226.7 (Rest Breaks)
5. B&P § 17203 (Cal. Wages)
6. B&P § 17203 (Meal and Rest Breaks)
7. Labor Code § 203 (Waiting Time Penalties)
8. Labor Code § 226 and 1174 (Wage Statements)
9. Labor Code § 2802 (Unreimbursed Business Expenses)
10. Labor Code § 2699 (PAGA Penalties)

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1 Plaintiffs Felicia Cipolla and Alexis Wood (hereinafter “Plaintiffs”), on behalf of themselves
2 and all others similarly situated, allege as follows:

3 **INTRODUCTION**

4 1. Plaintiffs bring this action as a Nationwide Representative Action on behalf of all
5 current and former employees who are or have been employed during the last three years as
6 “Promotional Specialist” for Defendants New Team LLC, doing business as Team Enterprises, and
7 Team Enterprises, LLC (“Defendants”) who elect to opt-in to this action. Plaintiffs allege that they
8 and other non-exempt employees were denied overtime compensation and other wages in violation of
9 the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* (“FLSA”).

10 2. Plaintiffs also bring this action as a California-only Sub-Class on behalf of all of
11 Defendants’ current and former employees who are or have been employed within the State of
12 California during the last four years as Promotional Specialists and who were (a) not paid overtime
13 compensation and other wages; (b) not provided meal and rest breaks; (c) not provided lawful wage
14 statements; and (d) who have not been reimbursed for all reasonable and necessary business
15 expenses.

16 3. Plaintiffs also bring this action as a California-only Waiting Time Penalties Sub-Class
17 on behalf of all of Defendants’ current and former employees who are or have been employed within
18 the State of California during the last three years as Promotional Specialists and who were not timely
19 and properly paid their final wages at time of termination in violation of California Labor Code §§
20 201-203.

21 4. Plaintiffs are unaware of the names and capacities of all Defendants who may have
22 caused or contributed to the harms complained of herein, but will seek leave to amend this complaint
23 once their identities become known. Upon information and belief, Plaintiffs allege that at all relevant
24 times each defendant was the officer, director, employee, agent, representative, alter ego, joint
25 employer, co-employer, or co-conspirator of each of the other defendants, and has engaged in the
26 conduct alleged herein, and was in the course and scope of and in furtherance of such relationship.

27 5. The Nationwide Representative Action, the California Sub-Class, and the California
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1 Waiting Time Penalties Sub-Class are hereafter collectively referred to as the “Class” or “Classes.”

2 6. The individual members of the Class are hereafter collectively referred to as the “Class
3 Members.”

4 **THE PARTIES**

5 7. Plaintiff Felicia Cipolla is an individual residing in El Sobrante, California. She was
6 employed by Defendants from approximately 2013 to December 2017. She worked as a Promotional
7 Specialist for Defendants within this judicial district.

8 8. Plaintiff Alexis Wood is an individual residing in Sacramento, California. She was
9 employed by Defendants from approximately 2013 to October 2017. She worked as a Promotional
10 Specialist for Defendants within this judicial district.

11 9. Defendant Team Enterprises, LLC is a Delaware limited liability corporation with its
12 principal place of business in Fort Lauderdale, Florida. Team Enterprises, LLC does business
13 throughout the state of California, including within this judicial district, and in other states
14 throughout the United States.

15 10. Defendant New Team, LLC is a Delaware limited liability corporation with its
16 principal place of business in Fort Lauderdale, Florida. New Team, LLC does business throughout
17 the state of California, including within this judicial district, and in other states throughout the
18 United States.

19 11. Defendants are in the business of marketing and promoting specific brands of products
20 on behalf of clients who own or sell those products. Defendants employed Plaintiffs and those
21 similarly situated to promote products at various events.

22 12. Plaintiffs are informed and believe, and thereon allege, that each of the defendants
23 herein was, at all times relevant to this action, the agent, employee, representing partner, and/or joint
24 venture of the remaining defendants and was acting within the course and scope of the relationship.
25 Plaintiffs are further informed, believe, and thereon allege that each of the defendants herein gave
26 consent to, ratified and authorized the acts alleged herein to the remaining defendants.

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JURISDICTION AND VENUE

13. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 29 U.S.C. § 216(b) on account of the federal question at issue in this litigation.

14. This Court has also original jurisdiction pursuant to 28 U.S.C. §1332(a) over civil actions arising between citizens of different states.

15. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiffs’ state law claims because those claims derive from a common nucleus of operative facts.

16. Venue is proper pursuant to 28 U.S.C. § 1391 as Defendants are subject to personal jurisdiction in this district because they conduct business within this judicial district.

17. At all times herein mentioned, Defendants are business entities licensed to do business and doing business in the Northern District of California. Plaintiffs and other class members worked for Defendants within the Northern District of California. Based on the facts and circumstances incident to Defendants’ business in California, Defendants are subject to the California Labor Code, California Business and Professions Code § 17200 *et seq.*, (Unfair Practices Act), the applicable Industrial Welfare Commission Wage Orders, and the FLSA.

FACTUAL ALLEGATIONS

18. During the applicable statutory period, Plaintiffs and those similarly situated worked as Promotional Specialists (also known as Promotional Models and Brand Ambassadors) for Defendants.

19. Defendants improperly classified (and continue to improperly classify) Promotional Specialists, including Plaintiffs and those similarly situated, as exempt from FLSA and California wage and hour protections.

20. Defendants paid Plaintiffs and the other Promotional Specialists an hourly rate for time spent working at events, but did not pay them for all hours worked and paid below minimum wage for certain tasks. For instance, Defendants required them to show up for events at least 15 minutes early and perform work after the events ended, but did not pay them for this time. Defendants paid a flat sum of \$5.00 for certain tasks that took a significant amount of time to complete.

1 Procedure 23.

2 28. The members of the Class and Sub-Classes are so numerous that joinder of all
3 members is impracticable. The exact number of the members of the Classes can be determined by
4 reviewing Defendants' records.

5 29. Plaintiffs will fairly and adequately protect the interests of the Classes and have
6 retained counsel who are experienced and competent in class action and employment litigation.
7 Plaintiffs have no interests that are contrary to, or in conflict with, members of the Class.

8 30. A class action suit, such as the instant one, is superior to other available means for fair
9 and efficient adjudication of this lawsuit. The damages suffered by individual members of the Classes
10 may be relatively small when compared to the expense and burden of litigation, making it virtually
11 impossible for members of the Classes to individually seek redress for the wrongs done to them.

12 31. A class action is, therefore, superior to other available methods for the fair and
13 efficient adjudication of the controversy. Absent these actions, the members of the Classes likely will
14 not obtain redress of their injuries and Defendants will retain the proceeds of their violations of
15 California and United States law.

16 32. Even if any member of the Classes could afford individual litigation against
17 Defendants, it would be unduly burdensome to the judicial system. Concentrating this litigation in
18 one forum will promote judicial economy and parity among the claims of individual members of the
19 Classes and provide for judicial consistency.

20 33. There is a well-defined community of interest in the questions of law and fact
21 affecting the Classes as a whole. Questions of law and fact common to each of the Classes
22 predominate over any questions affecting solely individual members of the action. Among the
23 common questions of law and fact are:

- 24 a. Whether Defendants failed to pay the Class members for all hours worked;
25 b. Whether Defendants failed to pay the Class members for time spent travelling
26 between events;
27 c. Whether the Class members are paid overtime compensation for hours worked over
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forty per week;

- d. Whether the California Class members are provided legally compliant meal breaks;
- e. Whether the California Class members are provided legally compliant rest breaks;
- f. Whether the California Class members are provided lawful reimbursements for business expenses;
- g. Whether the California Class members are paid overtime compensation for hours worked over eight hours per day and forty per week;
- h. Whether the California Class members are reimbursed for all reasonable and necessary business expenses;
- i. Whether the Class members have sustained damages and, if so, what the proper measure of damages is.

34. The answers to these predominant common questions are equally applicable to all Class Members and are answers that will drive resolution of this litigation.

35. Pursuant to 29 U.S.C. § 207, Plaintiffs seek to prosecute the FLSA claims as a Nationwide Representative Action on behalf of the following similarly situated persons:

All persons who are or have been employed, at any time from three years prior to the filing of this Complaint through the date of the Court’s granting of conditional certification in this matter, by Defendant under the job title Promotional Specialist, or the functional equivalent, however titled (the “FLSA class”)

36. Pursuant to Federal Rule of Civil Procedure 23(a) and (b), Plaintiffs also allege a California-only Sub-Class on behalf of:

All persons who are or have been employed, at any time from four years prior to the filing of this Complaint through the date of the Court’s granting of class certification in this matter, by Defendant in California under the job title Promotional Specialist, or the functional equivalent, however titled (the “California-only Sub-Class”)

37. Pursuant to Federal Rule of Civil Procedure 23(a) and (b), Plaintiffs also allege a California-only Waiting Time Penalties Sub-Class on behalf of:

All persons who are or have been employed, at any time from three years prior to the filing of this Complaint through the date of the Court’s granting of class certification in this matter, by Defendant in California under the job title Promotional Specialist or

the functional equivalent, however titled, who did not timely receive all of their wages at time of separation (the “Waiting Time Penalty Sub-Class.”)

38. Notice of the pendency and any resolution of this action can be provided to the Classes by mail, print, and/or internet publication.

FIRST CAUSE OF ACTION

(29 U.S.C. § 201 et seq. on behalf of the FLSA Class)

39. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

40. At all relevant times, Defendants have been and continue to be, employers engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

41. At all relevant times, Defendants employed, and/or continue to employ, Plaintiffs and each member of the FLSA Class within the meaning of the FLSA.

42. As alleged above, Defendants had a policy and practice of failing to pay their non-exempt employees for all hours worked; failing to properly pay overtime compensation to non-exempt employees for hours worked in excess of forty hours per week; and, failing to pay for travel time between events.

43. Defendants’ failure to pay Plaintiffs and all other members of the FLSA Class for all hours worked at their regular rate of pay and/or at the FLSA minimum wage rate, and overtime compensation at a rate not less than one and one-half times their regular rate for work performed beyond the 40 hour workweek is in violation of 29 U.S.C. §§ 206, 207.

44. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning 29 U.S.C. § 255(a).

45. Due to the Defendants’ FLSA violations, Plaintiffs, on behalf of the members of the FLSA Class, are entitled to recover from Defendants unpaid overtime compensation and other wages, an additional amount equal as liquidated damages, reasonable attorneys’ fees, and costs pursuant to 29 U.S.C. § 216(b).

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SECOND CAUSE OF ACTION

(Labor Code §§ 510, 1194 on behalf of the California Sub-Class)

46. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

47. California Labor Code § 510 states that an employee must be paid overtime, equal to 1.5 times the employee’s regular rate of pay, for all hours worked in excess of 40 per week and/or 8 per day.

48. Defendants routinely failed to pay Plaintiffs and other Class members for all hours worked. Class members worked more than 40 hours per week and 8 hours per day, but were not paid overtime compensation.

49. Class members are paid hourly and do not meet any of the tests for exempt status under the California Wage Orders and/or the California Labor Code.

50. By their failure to pay wages for all hours worked, as alleged above, Defendants have violated and continue to violate the above noted provisions of the California Labor Code and the applicable IWC Wage Order. As a result of Defendants’ unlawful acts, Plaintiffs and other Class members have been deprived of wages at the overtime rate, the regular rate and the minimum wage rate, and are entitled to recovery of such unpaid wages.

51. Due to Defendants’ failure to pay the minimum wage for all hours worked, Plaintiffs and other Class members are entitled to liquidated damages, in an amount equal to the unpaid minimum wages, pursuant to Labor Code § 1194.2.

52. Plaintiffs and other Class members seek their unpaid minimum wages, overtime compensation, and other wages, including interest thereon and reasonable attorneys’ fees and costs pursuant to Labor Code §§ 218.5 and 1194.

THIRD CAUSE OF ACTION

(Labor Code §§ 226.7 and 512 – Meal Period Violations - on behalf of the California Sub-Class)

53. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

1 54. In violation of Labor Code § 512 and IWC Wage Order 4-2001, Defendants failed to
 2 provide and document meal period breaks for the California Sub-Class in the number, length and
 3 manner as required. In violation of Labor Code § 226.7, Defendants have failed to pay Plaintiffs and
 4 the other Class members their wages owed for not being provided meal period breaks as required by
 5 law. At no time have Plaintiffs or other Class members entered into any written agreement with
 6 Defendant expressly or impliedly waiving their right to their meal breaks. Plaintiffs and the
 7 California Sub-Class have been injured by Defendants' failure to comply with Labor Code § 512 and
 8 IWC Wage Order 4-2001 and are thus entitled to the wages set forth in Labor Code § 226.7 and IWC
 9 Wage Order 4-2001 § 11.

10 55. As a proximate result of the unlawful acts of Defendants, Plaintiffs and the other Class
 11 members have been deprived of premium wages in an amount unknown at this time, but which will
 12 be shown according to proof at the time of trial. Further, Plaintiffs and the other Class members are
 13 entitled by statute to recover reasonable attorneys' fees, costs of suit, and interest and penalties on the
 14 unpaid amounts pursuant to Labor Code § 218.5.

FOURTH CAUSE OF ACTION

(Labor Code § 226.7 – Rest Period Violations - on behalf of the California Sub-Class)

17 56. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
 18 Complaint as if fully set forth herein.

19 57. Labor Code § 226.7 prohibits employers from requiring employees to work during any
 20 rest period mandated by the IWC Wage Orders. Section 226.7 also provides for the payment of a
 21 premium wage if an employer fails to authorize and permit employees to take rest periods.

22 58. By their failure to authorize and permit Plaintiffs and other Class members paid 10-
 23 minute rest periods for every four (4) hours or major fraction thereof worked per day, and failing to
 24 provide premium pay compensation for denied rest periods, Defendants willfully violated the
 25 provisions of Labor Code § 226.7 and IWC Wage Order 4-2001, § 12.

26 59. As a proximate result of the unlawful acts of Defendants, Plaintiffs and the other Class
 27 members have been deprived of premium wages in an amount unknown at this time, but which will

1 be shown according to proof at the time of trial. Further, Plaintiffs and the other Class members are
2 entitled by statute to recover reasonable attorneys' fees, costs of suit, and interest and penalties on the
3 unpaid amounts pursuant to Labor Code § 218.5.

4 **FIFTH CAUSE OF ACTION**

5 **(Bus. & Prof. Code § 17203 – Unpaid Overtime and Minimum Wages – on behalf of the
6 California Sub-Class)**

6 60. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
7 Complaint as if fully set forth herein.

8 61. Defendants have committed an act of unfair competition under California Business &
9 Professions Code § 17200 *et seq.* by not paying the required state law overtime pay and minimum
10 wages to the members of the California Sub-Class.

11 62. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs request an order requiring
12 Defendants to make restitution of all overtime and minimum wages due to the California Sub-Class.

13 **SIXTH CAUSE OF ACTION**

14 **(Bus. & Prof. Code § 17203 – Meal and Rest Breaks - on behalf of the California Sub-Class)**

15 63. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
16 Complaint as if fully set forth herein.

17 64. In violation of Labor Code § 512 and IWC Wage Order 4-2001, Defendants failed to
18 provide and document meal and rest period breaks for the California Sub-Class in the number, length
19 and manner as required. At no time have Plaintiffs or other Class members entered into any written
20 agreement with Defendants expressly or impliedly waiving their right to their meal and rest breaks.
21 Plaintiffs and the other Class members have been injured by Defendants' failure to comply with
22 Labor Code § 512 and IWC Wage Order 4-2001 and are thus entitled to the wages set forth in Labor
23 Code § 226.7 and IWC Wage Order 4-2001 §§ 11 and 12.

24 65. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs request Defendants make restitution
25 of all wages due to the class under this Cause of Action.

SEVENTH CAUSE OF ACTION

(Labor Code § 203 on behalf of the California Sub-Class)

66. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

67. Plaintiffs and the California Sub-Class were discharged by Defendants or voluntarily quit, and did not have a written contract for employment. Defendants, in violation of California Labor Code §§ 201 and 202 *et seq.* had a consistent and uniform policy, practice and procedure of willfully failing to pay the earned and unpaid wages of all such former employees. Defendants have willfully failed to pay the earned and unpaid wages of such individuals, including, but not limited to, straight time, overtime, meal and rest wages, and other wages earned and remaining uncompensated according to amendment or proof. Plaintiffs and the California Sub-Class did not secret or absent themselves from Defendants nor refuse to accept the earned and unpaid wages from Defendants. Accordingly, Defendants are liable for waiting time penalties for the unpaid wages pursuant to California Labor Code § 203.

EIGHTH CAUSE OF ACTION

(Labor Code §§ 226 and 1174 on behalf of the California Sub-Class)

68. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

69. Defendants, as a matter of corporate policy, did not maintain or provide accurate itemized statements in violation of Labor Code §§ 226 and 1174.

70. Defendants did not accurately state, *inter alia*, the total hours worked or daily hours worked by Plaintiffs and other non-exempt employees in their pay statements. Defendants' failure to maintain accurate itemized statements was willful, knowing, intentional, and the result of Defendants' custom, habit, pattern and practice. Defendants' failure to maintain accurate itemized statements was not the result of isolated, sporadic or unintentional behavior. Due to Defendants' failure to comply with the requirements of Labor Code § 226, Plaintiffs and other non-exempt employees suffered damages.

1 Complaint as if fully set forth herein.

2 73. As alleged above, Defendants failed to comply with the California Labor Code. As
3 such, Plaintiffs are “aggrieved employees” as defined in Labor Code § 2699(a). Pursuant to Labor
4 Code § 2699, the Labor Code Private Attorneys General Act of 2004, Plaintiffs bring this action on
5 behalf of themselves and other current and former employees against Defendants and seek recovery
6 of applicable civil penalties as follows:

- 7 a. where civil penalties are specifically provided in the Labor Code for each of the
8 violations alleged herein, Plaintiffs seek recovery of such penalties;
- 9 b. where civil penalties are not established in the Labor Code for each of the violations
10 alleged herein, Plaintiffs seek recovery of the penalties established in § 2699(e) of
11 the Labor Code Private Attorneys General Act of 2004, and in accordance with §
12 200.5 of the Labor Code.

13 74. On August 23, 2018, Plaintiffs filed and served the Labor and Workforce
14 Development Agency with written notices of their intent to file a lawsuit pursuant to Labor Code §
15 2699 *et seq.* Plaintiffs thereafter served Defendants with written notices via certified mail of their
16 intent to file a lawsuit pursuant to Labor Code § 2699 *et seq.*

17 75. The LWDA did not respond to the notices within the time provided by Labor Code §
18 2699.3.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the members of all classes,
21 pray for judgment as follows:

- 22 1. For an order conditionally certifying the Nationwide Representative Action and for an
23 order directing that notice be sent to all members of the FLSA Class;
- 24 2. For an order certifying the claims brought under California law and for an order
25 directing notice be send to all members of the California Sub-Classes;
- 26 3. For damages, restitution, penalties, attorney fees and costs; and,
- 27 4. For prejudgment interest.

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JURY DEMAND

Plaintiffs hereby request a jury trial on all issues so triable.

Dated: November 13, 2018

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By: /s/Edward J. Wynne

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