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ORIGINAL FILED**
Superior Court of California
County of Los Angeles

MAR 07 2017

Sherri R. Carter, Executive Officer/Clerk
By: Judi Lara, Deputy

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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

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10 TINA PATEL, in her representative capacity

Case No.

11
12 Plaintiff,

**CLASS ACTION AND
REPRESENTATIVE ACTION**

13 vs.

14 ONEWEST RESOURCES, LLC and Does 1-50,
15 inclusive,

16 Defendants.

1. Unpaid Overtime
2. Unpaid Minimum Wages
3. Failure to Pay Wages Upon Termination
4. Waiting Time Penalties Pursuant to Labor Code § 203
5. Unpaid Premium Pay for Missed Meal Periods
6. Failure to Provide Accurate Wage Statements
7. Unfair Business Practices
8. PAGA

DEMAND FOR JURY TRIAL

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22 Plaintiff Tina Patel in her representative capacity, alleges as follows:

23 **INTRODUCTION**

24 1. Plaintiff brings the following class and representative action against defendant
25 OneWest Resources, LLC. Defendant's policy and practice of requiring employees to clock in
26 and out on an internet-based time keeping system that employees could only access with a
27 computer running and connected to a website, resulted in Defendant's failure to pay all regular
28 and overtime wages due, failure to maintain records showing hours worked, untimely meal

1 periods, inaccurate wage statements, and wages due at termination.

2 **PARTIES**

3 2. Plaintiff Tina Patel worked for Defendant or its predecessors for over ten years.
4 She was employed as a Systems Analyst by Defendant from March 2009 to May 2015. Plaintiff
5 resides in Los Angeles County.

6 3. Plaintiff is informed and believes and thereupon alleges that at all times mentioned
7 herein, defendant OneWest Resources, LLC, with its principal place of business located at 888 E.
8 Walnut Street, Pasadena, California 91101, is and was a limited liability company organized in
9 California. Plaintiff is informed and believes and thereupon alleges that OneWest Resources,
10 LLC does business as OneWest Bank N.A.

11 4. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
12 Does 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
13 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
14 Plaintiff is informed and believes and thereon alleges that each of these fictitiously named
15 defendants is responsible in some manner for the acts or omissions herein alleged.

16 5. At all times mentioned herein, Defendant and Does 1 through 50, inclusive, were
17 the employees, agents, or representatives of each other defendant and were acting with the
18 knowledge and consent of each other defendant and within the purpose and scope of such
19 employment, agency, or representation in doing or failing to do the things alleged in this
20 complaint.

21 **JURISDICTION & VENUE**

22 6. This case is brought pursuant to California Code of Civil Procedure section 382
23 and Labor Code section 2699 et seq.

24 7. Venue is proper because Defendant resided in Los Angeles County at the
25 commencement of this action. Defendant employed Plaintiff and other putative class
26 members/aggrieved employees in Los Angeles County (in addition to other counties).

27 **GENERAL ALLEGATIONS**

28 8. On June 1, 2010, Defendant reclassified Plaintiff's position from exempt to non-

1 exempt, changing her title from Systems Analyst II to System/IT Analyst I. Plaintiff remained
2 classified as non-exempt the rest of her employment. She was normally scheduled to work from
3 7:00 AM to 4:00 PM.

4 9. In connection with this reclassification, Defendant instructed Plaintiff to record her
5 work time in an internet-based time management system called Enterprise eTime. Defendant's
6 employee handbook also instructs that all non-exempt employees "must use the Company's
7 approved timekeeping system(s)...." This remained Defendant's policy and practice throughout
8 the rest of Plaintiff's employment. Plaintiff is informed and believes and thereupon alleges that
9 Defendant's policy and practice continues to be that non-exempt employees must record their
10 time through Enterprise eTime.

11 10. The California Labor Code and the California Industrial Wage Orders require that
12 employers pay employees a minimum wage for all hours worked. In order to record her work
13 time in Enterprise eTime, Plaintiff had to first log into her computer, then go to the Enterprise
14 eTime website, log into the Enterprise eTime website with a username and password and navigate
15 to the page where she would click a button that would time stamp her beginning of work time.
16 Plaintiff had to repeat this procedure upon returning from her meal period. OneWest's computers
17 were also periodically completely shut down for computer updates and other reasons so that on
18 those occasions Plaintiff had additional uncompensated worktime as she had to start up her
19 computer before she could commence the process of clocking in. In fact, even though
20 Defendant's time-keeping policy and practice prevents an employee from recording the time it
21 took to complete this clocking-in procedure, Defendant's employee handbook admits that is work
22 time: "Work time includes, for example, time spent waiting to bring up a computer to log in."
23 Plaintiff is informed and believes and thereupon alleges that putative class members/aggrieved
24 employees had to undergo the same procedures to clock in each day. While it took less than ten
25 minutes to go through the clocking-in procedure, this uncompensated work time was a
26 requirement of the job that occurred every workday for every aggrieved employee.

27 11. Plaintiff also had to click the time stamp to clock out at the end of each day before
28 she could then log out of her computer. There was therefore also uncompensated work time after

1 clocking out each day. Plaintiff is informed and believes and thereupon alleges that putative class
2 members/aggrieved employees had to undergo the same procedures to clock out each day.

3 12. The California Labor Code and the California Industrial Wage Orders require that
4 employers pay employees overtime for all hours worked in excess of eight in a day or forty in a
5 week. Plaintiff regularly worked eight hours per day and/or 40 hours per week on the clock.
6 Because Defendant's time-keeping practice required her to start working before she was able to
7 clock in and to continue working after she clocked out, she regularly worked uncompensated
8 overtime hours. Plaintiff is informed and believes and thereupon alleges that putative class
9 members/aggrieved employees worked the same or similar hours and therefore also regularly
10 worked uncompensated overtime hours.

11 13. The California Labor Code and the California Industrial Wage Orders require that
12 "an employer may not employ an employee for a work period of more than five hours per day
13 without providing the employee with a meal period...." Plaintiff commenced her meal period
14 before the conclusion of her fifth hour of time on the clock when work duties allowed her to do
15 so. Because Defendant's time-keeping practice required her to start working before she was able
16 to clock in, some of her meal periods taken before the conclusion of her fifth hour of time on the
17 clock were not actually commenced until after the conclusion of her fifth hour of work time.

18 14. Under California law, an employer must pay an employee all wages due upon
19 termination or resignation. The willful failure to do so can result in waiting time penalties equal
20 to 30 days of an employee's wage. *See* Labor Code section 203. Defendant did not pay Plaintiff
21 or putative class members/aggrieved employees all wages due upon end of employment because
22 their time-keeping practices and policies prevented them from recording all worked time.
23 Defendant's conduct in refusing to pay these wages was willful.

24 15. Plaintiff is informed and believes and thereupon alleges that Defendant knowingly
25 and intentionally failed to furnish Plaintiff and putative class members/aggrieved employees with
26 accurate wage statements, which among other things, fail to show total hours worked. Plaintiff is
27 informed and believes and thereupon alleges that this failure was not due to a clerical error or
28 inadvertent mistake.

1 16. For the reasons alleged above, Defendant has willfully failed to keep payroll
2 records showing total hours worked and wages paid to employees. Under California Labor Code
3 § 1174(d), employers must keep “payroll records showing the hours worked daily by and the
4 wages paid to . . .employees [. . .].” Defendant willfully did not keep accurate time records
5 reflecting hours worked for their non-exempt employees.

6 **CLASS ALLEGATIONS**

7 17. Plaintiff brings this action on behalf of a Class of all OneWest’s non-exempt
8 employees who worked at its non-branch locations between September 18, 2014 and December
9 31, 2015.

10 18. Plaintiff reserves the right to refine the definition of the proposed Class (including
11 the applicable time frame) based on further investigation and discovery.

12 19. Plaintiff’s claims should be resolved on a class-wide basis, and there is a well-
13 defined community of interest with respect to the litigation.

14 20. The Class is sufficiently numerous and joinder of all putative class members is
15 impracticable.

16 21. The Class is ascertainable.

17 22. Plaintiff’s claims are typical of the claims of the Class she seeks to represent.

18 23. Plaintiff will fairly and adequately represent and protect the interests of the Class.
19 Plaintiff does not have interests which are adverse to the interests of absent class members.

20 24. Class counsel is experienced, qualified and capable. They have litigated numerous
21 class action cases.

22 25. There are common questions of law and fact. These include:

- 23 a. Was eTime capable of capturing all compensable worktime?
- 24 b. Is the time it takes non-exempt employees to log into their computers, then
25 go to the eTime website, log into the eTime website with a username and
26 password and navigate to the page where they would click a button that
27 would time stamp the beginning of work, compensable worktime under
28 California law?

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- c. Is the time it takes employees to shut down or log out and lock their computers after clocking out in eTime compensable worktime under California law?
- d. Does OneWest’s policy directing employees to “request the supervisor to make necessary changes to the employee’s time entries to reflect accurate time worked” comply with its obligations under the Labor Code to pay for all time worked?
- e. Does the *de minimis* doctrine bar the claims for uncompensated worktime?
- f. Does the failure to capture the worktime before clocking in on eTime cause meal periods that would otherwise be timely to become untimely in violation of Labor Code section 226.7?

26. A class action is the superior way of resolving the class members’ claims. Class treatment will permit a large number of similarly situated persons to prosecute their claims in a single forum and without unnecessary duplication, and without fear of retaliation. The damage incurred by each class member is relatively small, and the burdens of litigation would make it difficult or impossible for individual members to redress the wrong done to them. The cost to the court system of individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

FIRST CAUSE OF ACTION

Unpaid Overtime

27. Plaintiff incorporates paragraphs 1 through 26 of this Complaint as if set forth here.

28. Under California law, an employer must pay an employee overtime based upon their regular rate of pay for time worked in excess of 8 hours in a day. *See* California Labor Code sections 510, 1194.

29. Defendant knew or should have known that Plaintiff and the Class worked more than eight hours a day and more than forty hours a week.

30. Defendant failed to pay Plaintiff and the Class overtime for time spent working more than 8 hours in a day and/or 40 hours in a week.

1 31. Plaintiff and the Class were harmed as a result. They did not receive all the wages
2 to which they were entitled.

3
4 **SECOND CAUSE OF ACTION**

5 **Unpaid Minimum Wages**

6 32. Plaintiff incorporates paragraphs 1 through 31 of this Complaint as if fully set
7 forth here.

8 33. Under California law, an employer must pay an employee at least the minimum
9 wage set by the IWC for all hours worked. *See* California Labor Code sections 1182.12, 1194,
10 1197, 1197.1 and 1198.

11 34. Defendant knew or should have known that Plaintiff and the Class worked hours
12 without compensation, as alleged above.

13 35. Plaintiff and the Class were harmed as a result. They did not receive all the wages
14 to which they were entitled.

15 **THIRD CAUSE OF ACTION**

16 **Failure To Pay Wages Upon Termination**

17 36. Plaintiff incorporates paragraphs 1 through 35 of this Complaint as if fully set
18 forth here.

19 37. Under California law, an employer must pay an employee all accrued wages upon
20 termination. *See* Labor Code sections 201 and 202.

21 38. Defendant did not pay Plaintiff and the Class all owed overtime, regular wages,
22 premium pay for missed meal periods, and other owed wages upon termination.

23 39. Plaintiff and the Class were harmed as a result of Defendant's actions.

24 **FOURTH CAUSE OF ACTION**

25 **Waiting Time Penalties**

26 40. Plaintiff incorporates paragraphs 1 through 39 of this Complaint as if fully set
27 forth here.

28

1 41. Under California law, an employer must pay an employee all wages due upon
2 termination or resignation. The willful failure to do so results in waiting time penalties equal to
3 30 days of an employee's wage. See Labor Code section 203.

4 42. Defendant did not pay Plaintiff and the Class all wages due and owing upon their
5 separation from Defendant's employ. Defendant did not pay owed overtime wages. Defendant
6 did not pay premium pay for missed meal and rest periods.

7 43. This conduct by Defendant was willful. It knew or should have known of the
8 overtime wages incurred by Plaintiff and the Class. It knew or should have known that it was not
9 paying Plaintiff and the Class premium pay for missed meal periods.

10 44. As a result, Defendant is liable to Plaintiff and the Class for waiting time penalties.

11 **FIFTH CAUSE OF ACTION**

12 **Unpaid Premium Pay For Missed Meal Periods**

13 45. Plaintiff incorporates paragraphs 1 through 44 of this Complaint as if set forth
14 here.

15 46. Labor Code § 512 and applicable wage orders require that an employee receive a
16 meal period of one half hour in which the employee is relieved of all duty for every five hours
17 worked. Employees must receive a second meal period for workdays in which an employee works
18 more than 10 hours.

19 47. Labor Code § 226.7 provides that if an employer fails to provide an employee
20 required meal periods, the employer shall pay the employee one hour of pay at the employee's
21 regular rate of compensation for each workday that the meal period is not provided.

22 48. Plaintiff and the Class did not receive legally complaint meal periods.

23 49. Defendant was aware that Plaintiff and the Class did not receive legally compliant
24 meal periods but did not pay the premium pay required by Labor Code § 226.7.

25 50. Plaintiff and the Class were harmed as a result because they did not receive all the
26 premium pay to which they were entitled.

27 **SIXTH CAUSE OF ACTION**

28 **Failure To Provide Accurate Wage Statements**

1 51. Plaintiff incorporates paragraphs 1 through 50 of this Complaint as if fully set
2 forth here.

3 52. Under California law, an employer must provide employees with an accurate wage
4 statement. Among other things, the wage statement must accurately state the gross wages earned,
5 and the total hours worked. The penalties for violating this law are set by statute. See California
6 Labor Code sections 226.

7 53. Defendant knowingly and intentionally failed to provide Plaintiff and the Class
8 with accurate wage statements.

9 54. Plaintiff and the Class suffered injury as a result of Defendant's conduct.

10 **SEVENTH CAUSE OF ACTION**

11 **Unfair Business Practices**

12 55. Plaintiff incorporates paragraphs 1 through 54 of this Complaint as if fully set
13 forth here.

14 56. California law prohibits any unlawful, unfair, or fraudulent business practice. *See*
15 California Business and Professions Code section 17200.

16 57. Through its actions (as described above), Defendant has violated a variety of
17 California wage and hour laws. Plaintiff and the Class have been harmed by Defendant's
18 conduct. They have not been paid all wages earned. They have not been paid on a timely basis.

19 **EIGHTH CAUSE OF ACTION**

20 **(Violation of Government Code §2698 et seq.)**

21 58. Plaintiff incorporates paragraphs 1 through 57 of this Complaint as if set forth
22 here.

23 59. Plaintiff is an aggrieved employee under PAGA because she was employed by
24 Defendant during the applicable statutory period and suffered one or more of the Labor Code
25 violations set forth in this complaint. Plaintiff seeks to recover on her behalf, on behalf of the
26 State, and on behalf of all current and former aggrieved non-exempt employees of Defendant who
27 worked at non-branch locations between September 18, 2014 and December 31, 2015, the civil
28

1 penalties provided by PAGA, plus reasonable attorney's fees and costs in this representative
2 action.

3 60. Plaintiff seeks penalties pursuant to PAGA for the violation of the following Labor
4 Code sections:

5 a. failure to provide prompt payment of wages to non-exempt employees
6 upon termination and resignation in violation of Labor Code §§ 201, 202, 203;

7 b. failure to provide accurate itemized wage statements to non-exempt
8 employees in violation of Labor Code §§ 226(a), 1174, and 1174.5;

9 c. failure to provide meal periods in violation of applicable wage orders and
10 Labor Code §§ 226.7, 512, and 558;

11 d. failure to pay overtime wages in violation of applicable wage orders and
12 Labor Code §§ 510, 558, 1194 and 1198;

13 e. failure to pay minimum wages in violation of applicable wage orders and
14 Labor Code §§ 1182.12, 1194, 1194.2, 1197 and 1197.1;

15 f. failure to provide itemized wage statements to non-exempt employees in
16 violation of Labor Code §§ 226(a); and

17 g. failure to keep required payroll records in violation of the applicable wage
18 orders and Labor Code §§ 1174 and 1174.5.

19 61. With respect to violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil
20 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
21 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee
22 for each subsequent violation of Labor Code § 226(a).

23 62. With respect to violations of Labor Code §§ 510, 512, Labor Code § 558 imposes a
24 civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial
25 violations for each underpaid employee for each pay period for which the employee was underpaid in
26 addition to an amount sufficient to recover underpaid wages, and one hundred dollars (\$100) for
27 subsequent violations for each underpaid employee for each pay period for which the employee was
28 underpaid in addition to an amount sufficient to recover underpaid wages. Moreover, Plaintiff seeks

1 civil penalties in the amount of unpaid wages owed to aggrieved employees pursuant to Labor Code §
2 558(a)(3).

3 63. With respect to violations of Labor Code § 1174, Labor Code § 1174.5 imposes a civil
4 penalty of \$500.

5 64. Labor Code § 2699 et seq. imposes a civil penalty of one hundred dollars (\$100) per
6 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) pay period,
7 per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil
8 penalty is not specifically provided, including Labor Code §§ 226.7, 1174, 1182.12, 1194, 1197, and
9 1198.

10 65. Plaintiff has satisfied the requirements of Labor Code section 2699.3.

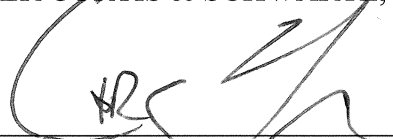
11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, on behalf of herself and the Class, and on behalf of the Sate and
13 other aggrieved employees, prays for judgment against Defendant as follows:

- 14 1. An Order that this action may proceed and be maintained on a class-wide basis;
- 15 2. Attorneys' fees and costs;
- 16 3. Restitution;
- 17 4. Damages, including unpaid wages and statutory penalties, according to proof;
- 18 5. Civil Penalties pursuant to PAGA;
- 19 6. Pre-judgment and post-judgment interest, as provided by law;
- 20 7. All other relief the Court deems equitable and proper.

21
22 Dated: March 7, 2017

BAKER CURTIS & SCHWARTZ, P.C.

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24 By: 
Chris Baker
Michael Curtis
Attorneys for Plaintiff
TINA PATEL

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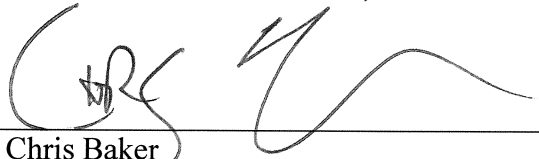
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JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: March 7, 2017

BAKER CURTIS & SCHWARTZ, P.C.

By: 

Chris Baker
Michael Curtis
Attorneys for Plaintiff
TINA PATEL