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12 Attorneys for Plaintiff  
CHRISTINA MENDOZA on behalf of herself and all other similarly situated employees

13  
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **FOR THE COUNTY OF SANTA CLARA**

16 CHRISTINA MENDOZA, as an individual  
17 and on behalf of all others similarly situated,

18 Plaintiff,

19 vs.

20 PLANNED PARENTHOOD MAR MONTE,  
21 INC., a California Corporation; and DOES 1  
22 through 100, inclusive,

23 Defendants.

Case No. 18CV329544

(Assigned to the Hon. Brian C. Walsh, Dept.  
1)

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES:**

- (1) **FAILURE TO PAY WAGES;**  
(2) **VIOLATION OF LABOR CODE §**  
**226.7;**  
(3) **VIOLATION OF LABOR CODE § 2802**  
(4) **VIOLATION OF LABOR CODE § 226;**  
**AND**  
(5) **UNFAIR PRACTICES ACT, B&P §**  
**17200 et seq.**  
(6) **VIOLATION OF LABOR CODE § 2698**  
**et seq.**

Complaint Filed: June 13, 2018

1 Plaintiff CHRISTINA MENDOZA (“Plaintiff”), hereby submits this First Amended  
2 Class and Representative Action Complaint (“Complaint”) against Defendants PLANNED  
3 PARENTHOOD MAR MONTE, INC., a California Corporation, and DOES 1-100 (hereinafter  
4 collectively referred to as “Defendants”), on behalf of herself and the Class of all other similarly  
5 situated current and former employees of Defendants for penalties and/or damages for violations  
6 of the California Labor Code, including without limitation, failure to pay proper minimum,  
7 regular and overtime wages, failure to provide rest breaks, failure to provide accurate itemized  
8 wage statements, and failure to timely pay wages to terminated employees as follows:

9 **INTRODUCTION**

10 1. This class action is within the Court’s jurisdiction pursuant to Labor Code §§ 201,  
11 202, 203, 204, 208, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 558, 1174, 1194, 1197,  
12 1197.1, 1198, 1199, 2802, and 2698, *et seq.*

13 2. This Complaint challenges systemic illegal employment practices resulting in  
14 violations of the California Labor Code against employees of Defendants.

15 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
16 jointly and severally have acted intentionally and with deliberate indifference and conscious  
17 disregard to the rights of all employees by failing to pay proper minimum, regular and overtime  
18 wages, failing to provide rest breaks, failing to provide accurate itemized wage statements, and  
19 failing to timely pay wages to terminated employees.

20 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
21 jointly and severally have acted intentionally and with deliberate indifference and conscious  
22 disregard to the rights of all employees by failing to pay proper minimum, regular and overtime  
23 wages, failing to provide rest breaks, failing to provide accurate itemized wage statements, and  
24 failing to timely pay wages to terminated employees.

25 5. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
26 have engaged in, among other things a system of willful violations of the California Labor Code  
27 by creating and maintaining policies, practices and customs that knowingly deny employees the  
28 above stated rights and benefits.

1 **JURISDICTION AND VENUE**

2 6. The Court has jurisdiction over the violations of the California Labor Code §§  
3 201, 202, 203, 204, 208, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 558, 1174, 1194,  
4 1197, 1197.1, 1198, 1199, 2802, and 2698, *et seq.*

5 7. Venue is proper in this Court because Plaintiff was employed by Defendant in the  
6 County of Santa Clara.

7 **PARTIES**

8 8. Plaintiff was previously employed by Defendants as a non-exempt employee for  
9 approximately 16 years until her employment was terminated on or about April 18, 2018.

10 9. During her employment, Plaintiff was routinely not provided with proper wages.  
11 First, Defendants had a time “rounding” policy that resulted in the wages of employees being  
12 underpaid. Second, whenever Defendants required its employees to travel for work, the time  
13 spent travelling was not properly paid. Third, whenever employees earned non-discretionary  
14 incentive pay, Defendants did not properly factor any such incentive pay into the regular rate of  
15 pay for purposes of paying overtime wages. Fourth, Defendants routinely short-staffed its  
16 workforce, which resulted in the employees’ inability to take off-duty rest breaks. Fifth, the  
17 wage statements issued by Defendants to its employees failed to accurately identify the  
18 applicable rates of pay, the applicable hours worked, the total hours worked, and the gross and  
19 net wages earned. Finally, whenever Defendants required its employees to travel for work,  
20 Defendants did not properly reimburse its employees for the travel costs such as mileage.

21 10. Plaintiff was and is the victim of the policies, practices, and customs of  
22 Defendants complained of in this action in ways that have deprived her of the rights guaranteed  
23 by California Labor Codes §§ 201, 202, 203, 204, 208, 216, 218, 218.5, 218.6, 223, 225.5, 226,  
24 226.7, 510, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802, and 2698, *et seq.*

25 11. Plaintiff is informed and believes, and based thereon alleges, that at all times  
26 herein mentioned Defendants and DOES 1 through 100 are and were business entities,  
27 individuals, and partnerships, licensed to do business and actually doing business in the State of  
28 California.

1           12.     As such, and based upon all the facts and circumstances incident to Defendants'  
2 business in California, Defendants are subject to California Labor Codes §§ 201, 202, 203, 204,  
3 208, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 558, 1174, 1194, 1197, 1197.1, 1198,  
4 1199, 2802, and 2698, *et seq.*

5           13.     Plaintiff does not know the true names or capacities, whether individual, partner  
6 or corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for that  
7 reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to  
8 amend this complaint when the true names and capacities are known. Plaintiff is informed and  
9 believes, and based thereon alleges, that each of said fictitious Defendants was responsible in  
10 some way for the matters alleged herein and proximately caused Plaintiff and members of the  
11 general public and class to be subject to the illegal employment practices, wrongs and injuries  
12 complained of herein.

13           14.     At all times herein mentioned, each of said Defendants participated in the doing  
14 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the  
15 Defendants, and each of them, were the agents, servants and employees of each of the other  
16 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were  
17 acting within the course and scope of said agency and employment.

18           15.     Plaintiff is informed and believes, and based thereon alleges, that at all times  
19 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or  
20 joint venturer of, or working in concert with each of the other co- Defendants and was acting  
21 within the course and scope of such agency, employment, joint venture, or concerted activity.  
22 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of  
23 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting  
24 Defendants.

25           16.     At all times herein mentioned, Defendants, and each of them, were members of,  
26 and engaged in, a joint venture, partnership and common enterprise, and acting within the course  
27 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.  
28



1 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the class and the  
2 named Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in  
3 the past and currently have a number of wage-and-hour class actions pending in California  
4 courts.

5       21.    **Common Question of Law and Fact:** There are predominant common questions  
6 of law and fact and a community of interest amongst Plaintiff and the claims of the Class  
7 concerning Defendants' failure to pay proper minimum, regular and overtime wages, failure to  
8 provide rest breaks, failure to provide accurate itemized wage statements, and failure to timely  
9 pay wages to terminated employees.

10       22.    **Typicality:** The claims of the named Plaintiff are typical of the claims of all  
11 members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar  
12 and typical manner as the Class members.

13       23.    The California Labor Code and upon which Plaintiff bases her claims is broadly  
14 remedial in nature. These laws and labor standards serve an important public interest in  
15 establishing minimum working conditions and standards in California. These laws and labor  
16 standards protect the average working employee from exploitation by employers who may seek  
17 to take advantage of superior economic and bargaining power in setting onerous terms and  
18 conditions of employment.

19       24.    The nature of this action and the format of laws available to Plaintiff and  
20 members of the Class identified herein make the class action format a particularly efficient and  
21 appropriate procedure to redress the wrongs alleged herein. If each employee were required to  
22 file an individual lawsuit, the corporate Defendant would necessarily gain an unconscionable  
23 advantage since it would be able to exploit and overwhelm the limited resources of the individual  
24 Plaintiff with Defendants' vastly superior financial and legal resources. Requiring each Class  
25 member to pursue an individual remedy would also discourage the assertion of lawful claims by  
26 employees who would be disinclined to file an action against their former and/or current  
27 employer for real and justifiable fear of retaliation and permanent damage to their careers at  
28 subsequent employment.



1 and overtime wages pursuant to Labor Codes §§ 201, 202, 203, 204, 208, 216, 218, 218.5, 218.6,  
2 223, 225.5, 510, 558, 1174, 1194, 1197, 1197.1, 1198, and 1199.

3 31. Defendants regularly required Plaintiff and class members to work without the  
4 payment of proper minimum, regular and/or overtime wages. First, Defendants had a time  
5 “rounding” policy that resulted in the wages of employees being underpaid. Second, whenever  
6 Defendants required its employees to travel for work, the time spent travelling was not properly  
7 paid. Third, whenever employees earned non-discretionary incentive pay, Defendants did not  
8 properly factor any such incentive pay into the regular rate of pay for purposes of paying  
9 overtime wages.

10 32. Plaintiff is informed and believe and based thereon allege Defendants willfully  
11 failed to pay employees all proper wages. Plaintiff is informed and believe and based thereon  
12 allege Defendants’ willful failure to provide all wages due and owing them upon separation from  
13 employment results in a continued payment of wages up to thirty (30) days from the time the  
14 wages were due. Therefore, all members of the Class who have separated from employment are  
15 entitled to compensation pursuant to Labor Code § 203.

16 33. Such a pattern, practice and uniform administration of corporate policy regarding  
17 illegal employee compensation as described herein is unlawful and creates an entitlement to  
18 recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of minimum,  
19 regular and/or overtime wages owing, including interest thereon, waiting time penalties pursuant  
20 to Labor Code § 203, attorneys’ fees, and costs of suit according to the mandate of California  
21 Labor Code § 218.5 and 1194.

22 **SECOND CAUSE OF ACTION**

23 **VIOLATION OF LABOR CODE § 226.7**

24 **(AGAINST ALL DEFENDANTS)**

25 34. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33 as  
26 though fully set forth herein.

27 35. Defendants failed in its affirmative obligation to provide off-duty rest breaks to its  
28 non-exempt employees. Specifically, Defendants routinely short-staffed its workforce. As a

1 result of such common practice, non-exempt employees were routinely denied an opportunity to  
2 take off-duty and timely rest breaks pursuant to the mandates of Labor Code § 226.7.

3 36. Plaintiff is informed and believe and based thereon allege Defendants willfully  
4 failed to pay employees all proper rest period premium wages. Plaintiff is informed and believe  
5 and based thereon allege Defendants' willful failure to provide all rest period premium wages  
6 due and owing them upon separation from employment results in a continued payment of wages  
7 up to thirty (30) days from the time the wages were due. Therefore, all members of the Class  
8 who have separated from employment are entitled to compensation pursuant to Labor Code §  
9 203.

10 37. Such a pattern, practice and uniform administration of corporate policy as  
11 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class  
12 identified herein, in a civil action, for all damages pursuant to Labor Code § 226.7, all waiting  
13 time penalties pursuant to Labor Code § 203, and all applicable interest, attorneys' fees, and  
14 costs of suit.

15 **THIRD CAUSE OF ACTION**

16 **VIOLATION OF LABOR CODE § 2802**

17 **(AGAINST ALL DEFENDANTS)**

18 38. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 37 as  
19 though fully set forth herein.

20 39. Defendants failed in its affirmative obligation to reimburse its employees for all  
21 business expenses incurred as a result of discharging their job duties. Specifically, whenever  
22 Defendants required its employees to travel for work, Defendants failed to reimburse its  
23 employees for the costs of such travel, including, but not limited to mileage costs.

24 40. Such a pattern, practice and uniform administration of corporate policy as  
25 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class  
26 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 2802,  
27 including interest thereon, attorneys' fees, and costs of suit according to the mandate of  
28 California Labor Code § 2802.







1 California Labor Code §§ 201-203 and 226.7, and for costs and attorneys' fees;

2 6. Upon the Third Cause of Action, for damages pursuant to California Labor Code  
3 § 2802, and for costs and attorneys' fees;

4 7. Upon the Fourth Cause of Action, for damages and/or penalties pursuant to  
5 California Labor Code § 226, and for costs and attorneys' fees;

6 8. Upon the Fifth Cause of Action, for restitution to Plaintiff and other similarly  
7 effected members of the general public of all funds unlawfully acquired by Defendants by means  
8 of any acts or practices declared by this Court to be in violation of Business and Professions  
9 Code § 17200 *et seq.*;

10 9. Upon the Sixth Cause of Action, for civil penalties according to proof pursuant to  
11 Labor Code § 2698 *et seq.*, and for costs and attorneys' fees; and

12 10. On all causes of action, for attorneys' fees and costs as provided by California  
13 Labor Code §§ 218.5, 226, 1194, 2802, and 2698 *et seq.*, and Code of Civil Procedure § 1021.5;  
14 and

15 11. For such other and further relief as the Court may deem just and proper.

16  
17 Dated: August 14, 2018

DIVERSITY LAW GROUP, P.C.

18  
19 By: 

Larry W. Lee

Attorneys for Plaintiff and the Class

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3  
4 STATE OF CALIFORNIA ]  
5 COUNTY OF LOS ANGELES ]ss.  
6 ]

7 I am employed in the County of Los Angeles, State of California. I am over the age of  
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite  
9 1250, Los Angeles, California 90071.

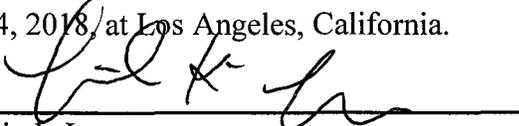
10 On August 14, 2018, I served the following document(s) described as: **FIRST**  
11 **AMENDED CLASS ACTION COMPLAINT** on the interested parties in this action as  
12 follows:

13 Elizabeth A. Falcone, Esq.  
14 Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
15 The KOIN Center  
16 222 SW Columbia Street, Suite 1500  
17 Portland, OR 97201  
18 *Attorneys for Defendant Planned Parenthood*  
19 *Mar Monte, Inc.*

20 B. James Fitzpatrick, Esq.  
21 Charles Swanston, Esq.  
22 Gladys Rodriguez-Morales, Esq.  
23 FITZPATRICK & SWANSTON  
24 555 South Main Street  
25 Salinas, CA 93901  
26 *Attorneys for Plaintiff Christina Mendoza*

27  X  BY ELECTRONIC SERVICE: Based on a court order I caused the above-  
28 entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website  
29 [www.california.tylerhost.net](http://www.california.tylerhost.net), addressed to all parties appearing on the electronic service list for  
30 the above-entitled case. The service transmission was reported as complete and a copy of the  
31 filing receipt/confirmation will be filed, deposited, or maintained with the original document(s)  
32 in this office.

33 I declare under penalty of perjury under the laws of the State of California that the  
34 above is true and correct. Executed on August 14, 2018, at Los Angeles, California.

35   
36 \_\_\_\_\_  
37 Linda Lee