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on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

SAMANTHA VARELA AYALA, an
individual on behalf of herself and all others
similarly situated,

Plaintiff,

vs.

TORY BURCH, LLC, a Delaware limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 24CV072587

CLASS ACTION

Assigned for All Purposes To:

Hon. Michael Markman

Dept.: 23

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Under Labor Code § 510;
3. Failure to Properly Pay Vacation Wages;
4. Failure to Properly Pay Sick Pay;
5. Meal Period Liability Under Labor Code § 226.7;
6. Rest-Break Liability Under Labor Code § 226.7;
7. Failure to Provide Accurate Wage Statements Under Labor Code § 226(a);
8. Failure to Maintain Records Under Labor Code §§ 1174 and 1174.5;
9. Failure to Timely Pay Wages Upon Termination Under Labor Code § 203;
10. Failure to Pay Reporting Time Pay;
11. Failure to Reimburse Necessary Business Expenses § 2802; and
12. Violation of B & P Code § 17200 *et seq.*
13. Penalties under PAGA, Labor Code § 2698

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff SAMANTHA VARELA AYALA (“Plaintiff”) brings this action on behalf of herself and the Class Members who are defined as all current and former employees within the State of California who, at any time from four (4) years prior to the filing of this lawsuit, are or were employed as non-exempt hourly employees by Defendant TORY BURCH, LLC, a Delaware limited liability company; and DOES 1 through 50 (all defendants being collectively referred to herein as “Defendants”).

2. Plaintiff alleges that Defendants, and each of them, violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and the California Business & Professions Code, and seeks redress for these violations.

3. Upon information and belief, Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3) endured similar violations at the hands of Defendants as the other Class Members who served in similar and related positions.

THE PARTIES

A. The Plaintiff

4. Plaintiff SAMANTHA VARELA AYALA resides in California, during the time period relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee within the State of California.

B. The Defendants

5. Defendant TORY BURCH, LLC is a Delaware limited liability company and lists its principal address with the California Secretary of State in New York, New York. TORY BURCH, LLC is listed as an employer on Plaintiff’s wage statements during the relevant time period that Plaintiff was employed with Defendants. Plaintiff is informed and believes, and thereupon alleges, that TORY BURCH, LLC conducts business in Alameda County, and throughout California, and employed, and continues to employ, individuals (including Plaintiff and Class members) in Alameda County, and throughout California.

6. The true names and capacities, whether individual, corporate, associate, or whatever

1 else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to
2 Plaintiff, who therefore sue these Defendants by such fictitious names under Code of Civil
3 Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants designated
4 herein as Does 1 through 50, inclusive, and each of them, are legally responsible in some manner
5 for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to
6 reflect the true names and capacities of the Defendants designated herein as Does 1 through 50 when
7 their identities become known.

8 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
9 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out
10 a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each
11 Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all
12 respects as the employers or joint employers of Class Members. Defendants, and each of them,
13 exercised control over the wages, hours or working conditions of Class Members, or suffered or
14 permitted Class Members to work, or engaged, thereby creating a common law employment
15 relationship, with Class Members. Therefore, Defendants, and each of them, employed or jointly
16 employed Class Members.

17 8. Whenever and wherever reference is made in this Complaint to any act by a
18 defendant or defendants, such allegations and references shall also be deemed to mean the acts and
19 failures to act of each defendant acting individually, jointly, and severally.

20 9. Whenever and wherever reference is made to individuals who are not named as a
21 Defendant in this Complaint but were agents, servants, employees and/or supervisors of Defendants,
22 such individuals at all relevant times acted on behalf of Defendants within the scope of their
23 employment.

24 **JURISDICTION AND VENUE**

25 10. This Court has jurisdiction over this Action pursuant to California Code of Civil
26 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as
27 a Class Action on behalf of similarly situated Class Members of Defendants pursuant to California
28 Code of Civil Procedure § 382.

11. Venue as to Defendants is also proper in this judicial district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and liabilities giving rise to this lawsuit occurred in part in Alameda County. Defendants maintain and operate retail stores in Alameda County and employ Plaintiff and other Class Members in Alameda County, while doing business throughout California.

FACTUAL BACKGROUND

12. Class Members consistently worked at Defendants behest without being paid all wages due. Class Members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Class Members all wages due and owing, including by requiring off the clock work; failing to pay all bonuses and/or commissions earned; failing to incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to calculate and pay for overtime pay, vacation and sick pay, and meal and rest break premiums; failing to pay reporting time pay; failing to provide meal and rest breaks; failing to timely pay wages including final wages all in violation of various provisions of the California Labor Code and applicable Wage Orders. Defendants also failed to pay Class Members “premium pay,” i.e. one hour of wages at each Class Member’s effective hourly rate of pay, for each meal period and/or rest break that Defendants failed to provide or deficiently provided.

13. During the course of Class Members’ employment with Defendants, they were not paid all wages they were owed, including for all worked performed resulting in off the clock work. Class Members were required to perform pre-shift and post-shift off the clock work related tasks, which they were not compensated for despite being subject to Defendants’ control. Specifically, Class Members were required to go through security bag checks before and after their shifts and meal periods, wait in line for several minutes before clocking in and out for shifts and meal periods, and wait for all employees to clock out and gather their belongings and then collectively wait for the alarm to be set before being allowed to leave the premises on closing shifts. Moreover, Defendants expected Plaintiff to respond to phone calls from her supervisors and/or clients on her personal cell phone at all times, including times when she was off the clock.

1 14. Defendants failed to pay Class Members all wages due and owing because
2 Defendants failed to pay all bonuses and/or commissions earned by Class Members. Defendants
3 maintained a non-discretionary bonus and/or commission program whereby bonus and/or
4 commissions were paid to Class Members when Class Members hit certain sales goals and/or quotas.
5 Upon information and belief, Defendants would *post-facto* change and/or alter the terms non-
6 discretionary bonus and/or commission program in order to avoid paying Class Members all earned
7 bonus and/or commission wages. Upon information and belief, Defendant would make these post-
8 facto changes and/or alterations without proper written notice in violation of Labor Code § 2751.

9 15. Defendants also failed to pay Class Members all wages due and owing because
10 Defendants failed to incorporate non-discretionary bonuses and/or commissions into the regular rate
11 of pay. Contrary to the requirements of the Labor Code and IWC Wage Orders under California
12 law, Defendants did not incorporate these non-discretionary bonuses and/or commissions paid to
13 the Class Members into the regular rate of pay Defendants used to calculate and pay for overtime,
14 vacation and sick pay, and meal and rest break premiums.

15 16. By implementing policies, programs, practices, procedures and protocols which
16 resulted in off the clock work, the failure to pay all earned bonuses/commissions, and the failure to
17 incorporate non-discretionary bonuses and/or commissions into the regular rate of pay, Defendants'
18 willful actions resulted in the systematic underpayment of wages to Class Members, including
19 underpayment of overtime pay to Class Members over the relevant time period. For example, the
20 above described off the clock work addressed above caused Plaintiff to begin receiving overtime
21 pay later than she should have.

22 17. As a result of the above described requirements to work off the clock, failure to pay
23 all earned bonuses/commissions, failure to incorporate non-discretionary bonuses and/or
24 commissions into the regular rate of pay used to calculate and pay, and the other wage violations
25 they endured at Defendants' hands, Class Members were not properly paid all wages earned and all
26 wages owed to them by Defendants, including when working more than eight (8) hours in any given
27 day and/or more than forty (40) hours in any given week.

28 18. Defendants generally discouraged employees from incurring overtime, as they

1 scheduled shifts for no more than eight hours a day or forty in a week. Plaintiff felt pressured by
2 management and work demands placed upon her to work off the clock and feared being terminated
3 if she did otherwise. Upon information and belief, the other Class members were subjected to similar
4 common policies and practices and were subjected to similar scheduling requirements and off the
5 clock work requirements.

6 19. As a result of Defendants' unlawful policies and practices, Class Members incurred
7 overtime hours worked for which they were not adequately and completely compensated, in addition
8 to the hours they were required to work off the clock.

9 20. Therefore, from at least four (4) years prior to the filing of this lawsuit and continuing
10 to the present, Defendants had a consistent policy or practice of failing to pay Class Members for
11 all hours worked and all wages earned, as required by California law. Defendants failed to pay Class
12 Members at least minimum wages for all the time they worked for Defendants in violation of the
13 Labor Code and applicable IWC Wage Orders as the actual times when Class Members were under
14 the control and direction of Defendants was under reported in the hours reflected on the timekeeping
15 records. Furthermore, Defendants' willful actions resulted in the systematic underpayment of wages
16 to Class Members, including underpayment of overtime pay to Class Members over a period of
17 time.

18 21. Also, from at least four (4) years prior to the filing of this lawsuit and continuing to
19 the present, Defendants also had a consistent policy or practice of failing to pay Class Members
20 their true and correct overtime compensation at premium overtime rates for all hours worked in
21 excess of eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours
22 worked in excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
23 sections of IWC Wage Orders.

24 22. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
25 meal periods and all the legally required paid, off-duty rest periods to Class Members, as required
26 by the applicable Wage Order and Labor Code. Class Members were required to perform work as
27 ordered by Defendants for more than five (5) hours during a shift but were often required to do so
28 without receiving a lawful and timely meal break. Moreover, as mentioned above, Defendants

1 expected Plaintiff to respond to work demands, including responding to phone calls on her personal
2 cell phone, at all times, including times when she was clocked out for meal breaks. Defendants
3 placed their needs over Class Members lawful meal breaks and this resulted in Class Members often
4 having to work through their scheduled meal breaks, or otherwise take shortened ones, because the
5 demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off
6 duty meal break.

7 23. On the occasions when Class Members worked over 10 hours in a shift, Defendants
8 also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a
9 result, Defendants' failure to provide Class Members with all legally required off-duty, unpaid meal
10 periods and all the legally required off-duty is and will be evidenced by Defendants' business
11 records, or lack thereof. Defendants also failed to pay Class Members "premium pay," i.e. one hour
12 of wages at each Class Member's effective hourly rate of pay, for each meal period that Defendants
13 failed to provide or deficiently provided.

14 24. Therefore, for at least four years prior to the filing of this action through the present,
15 Defendants regularly required Class Members to work shifts in excess of five (5) hours without
16 providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in
17 excess of (10) hours without providing them with second meal periods of not less than thirty
18 minutes; nor did Defendants pay Class Members "premium pay," i.e. one hour of wages at each
19 Class Member's effective hourly rate of pay, for each meal period that Defendants failed to provide
20 or deficiently provided.

21 25. Meal period violations thus occurred in one or more of the following manners:

- 22 (a) Class Members were not provided full thirty-minute duty free meal periods
23 for work days in excess of five (5) hours and were not compensated one (1)
24 hour's wages in lieu thereof, all in violation of, among others, Labor Code
25 §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage
26 Order(s);
- 27 (b) Class Members were not provided second full thirty-minute duty free meal
28 periods for work days in excess of ten (10) hours;

- (c) Class Members were required to work through at least part of their daily meal period(s);
- (d) Meal periods were provided after five (5) hours of continuous work during a shift; and
- (e) Class Members were restricted in their ability to take a full thirty-minute meal period.

26. Class Members were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks and were not provided with one (1) hour of wages in lieu thereof. Class Members were restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. In addition, as mentioned above, Defendants expected Plaintiff to respond to phone calls on her personal cell phone at all times, including while taking rest breaks. Therefore, from at least four years prior to the filing of this lawsuit and continuing to the present, Defendants have consistently failed to provide Class Members with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, or major fraction thereof, nor did Defendants pay Class Members premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

27. Rest period violations therefore arose in one or more of the following manners:

- (a) Class Members were required to work without being provided a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked and were not compensated one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not provided;
- (b) Class Members were not authorized and permitted to take timely rest periods for every four hours worked, or major fraction thereof; and
- (c) Class Members were required to remain on-duty during rest periods or otherwise had their rest periods interrupted by work demands.

28. Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements given to Class Members failed

1 to incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to
2 calculate and pay overtime compensation, sick pay, and meal and rest break premiums. Thus, the
3 wage statements do not comply with Labor Code § 226(a)(9). Additionally, the wage statements
4 given to Class Members failed to accurately account for unpaid wages and overtime because their
5 actual hours worked were under-reported due to off the clock work. Moreover, the wage statements
6 failed to accurately account for bonuses and/or commissions earned. Finally, the wage statements
7 given to Class Members failed to accurately account for premium pay for deficiently provided meal
8 periods and rest breaks.

9 29. From at least four (4) years prior to filing this lawsuit and continuing to the present,
10 Defendants have thus also had a consistent policy of failing to pay all wages owed to Class Members
11 at the time of their termination of within seventy-two (72) hours of their resignation, as required by
12 California wage-and-hour laws. Class Members were not paid all regular and overtime wages
13 because Defendants failed to pay all wages owed by failing to pay all bonuses and/or commissions
14 earned; by failing to pay for all hours worked due to off the clock work; and by failing to pay for all
15 hours worked by failing to incorporate non-discretionary bonuses and/or commissions into the
16 regular rate of pay used to calculate and pay for overtime, vacation and sick pay, and meal and rest
17 break premiums, and failing to pay meal and rest break premiums owed, as further detailed in this
18 Complaint. Defendants' failure to pay said wages within the required time was willful within the
19 meaning of Labor Code § 203.

20 30. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
21 continuing to the present, Defendants have consistently failed to keep accurate time and wage
22 records as required by California wage-and-hour laws.

23 31. From at least four (4) years prior to the filing of this lawsuit and continuing to the
24 present, Defendants had a common policy and practice of failing to pay Plaintiff and Class Members
25 all reporting time pay to which they were entitled under California law. Specifically, Plaintiff and
26 Class Members were required to call in or otherwise show up to work without being paid half of
27 their usual or scheduled day's work when sent home without being put to work or working less than
28 half of the scheduled day's work in violation of California law.

1 32. From at least four (4) years prior to the filing of this lawsuit and continuing to the
2 present, Defendants have regularly required Plaintiff to incur business expenses in the course of
3 performing their required job duties for Defendants, including for cell phone expenses. Upon
4 information and belief, Class Members incurred similar costs. These expenses incurred by Plaintiff
5 and Class Members were necessary and required of them in performing their assigned job duties,
6 but Defendants failed to reimburse Plaintiff and Class Members for all such necessary expenditures,
7 thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and
8 the applicable provisions of the IWC Wage Orders.

9 33. From at least four (4) years prior to the filing of this lawsuit and continuing to the
10 present, Defendants also failed to provide suitable seating to Plaintiff and the Class Members.
11 Plaintiff worked in retail. Throughout her shifts, Plaintiff would be required to stand for long
12 periods. Defendants should have provided Plaintiff with suitable seating, such as a chair or a stool
13 or the like, and such seating would in no way have interfered with the performance of Plaintiff's job
14 duties. California Labor Code §1198 makes it illegal to employ an employee under conditions of
15 labor that are prohibited by the applicable Wage Order. By failing to provide Plaintiff and Class
16 Members with suitable seats in violation of Wage Order 7-2001, § 14, Defendants violated Labor
17 Code § 1198. Plaintiff has been injured because she was employed by Defendants and was not
18 provided with suitable seating, in violation of Labor Code § 1198 and Wage Order 7-2001, § 14.
19 She was harmed by Defendants' failure to provide seats because she was required to stand for
20 extended periods of time despite the fact that the nature of the work did not require that she remain
21 standing at all times.

22 34. In light of the foregoing, Plaintiff and Class Members bring this action pursuant to,
23 *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 223, 226, 226.3, 226.7, 227.3, 245, 246, 510,
24 512, 558, 558.1, 1182.12, 1185, 1194, 1194.2, 1197, 1198, and 1199, 2751, 2698 et seq., 2802, and
25 California Code of Regulations, Title 8, section 11000 *et seq.*

26 35. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
27 and the Class Members seek injunctive relief, restitution, and disgorgement of all benefits
28 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or

fraudulent practices alleged in this Complaint.

CLASS ALLEGATIONS

36. Plaintiff seeks to represent the Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class Members who were not paid all wages earned and/or compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Overtime Subclass. All Class Members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

c. Subclass 3. Vacation Wages Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their vacation wages.

d. Subclass 4. Sick Pay Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their sick pay wages.

e. Subclass 5. Meal Period Subclass. All Class Members who were subject to Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-free meal periods or one hour of pay at the Class Member's regular rate of pay in lieu thereof.

f. Subclass 6. Rest Break Subclass. All Class Members who were subject to Defendants' policy and/or practice of failing to authorize and permit Class Members to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Class Member's regular rate of pay in lieu thereof.

g. Subclass 7. Wage Statement Subclass. All Class Members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

h. Subclass 8. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

i. Subclass 8. Termination Pay Subclass. All Class Members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon

1 termination.

2 j. Subclass 9: Reporting Time Pay Subclass. All Class members who were required to
3 call in or otherwise show up to work without being paid half of their usual or scheduled day's work
4 from four years prior to the filing of this action and ending on the date that final judgment is entered
5 in this action.

6 k. Subclass 10. Expense Reimbursement Subclass. All Class Members who incurred
7 necessary and reasonable expenses in connection with performing their job duties for Defendant and
8 who were subject to a policy and/or practice under which such expenses were not reimbursed.

9 l. Subclass 11. UCL Subclass. All Class Members who are owed restitution as a result
10 of Defendants' business acts and practices, to the extent such acts and practices are found to be
11 unlawful, deceptive, and/or unfair.

12 37. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify
13 the class description with greater particularity or further division into subclasses or limitation to
14 particular issues. To the extent equitable tolling operates to toll claims by the Class against
15 Defendants, the Class Period should be adjusted accordingly.

16 38. Defendants, as a matter of company policy, practice and procedure, and in violation
17 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,
18 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in
19 a practice whereby Defendants failed to correctly calculate compensation for the time worked by
20 Class Members, even though Defendants enjoyed the benefit of this work, required Class Members
21 to perform this work and permitted or suffered to permit this work. Defendants have uniformly
22 denied these Class Members wages to which these employees are entitled and failed to provide meal
23 periods or authorize and permit rest periods, in order to unfairly cheat the competition and
24 unlawfully profit.

25 39. This action has been brought and may properly be maintained as a class action under
26 the provisions of Code of Civil Procedure § 382 because there is a well-defined community of
27 interest in litigation and proposed class is easily ascertainable.

28 **A. Numerosity**

1 40. The potential members of the class as defined are so numerous that joinder of all the
2 member of the class is impracticable. While the precise number of class members has not been
3 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
4 time period relevant to this lawsuit, hundreds of employees who satisfy the Class definition within
5 the State of California.

6 41. Accounting for employee turnover during the relevant time period increases this
7 number substantially. Plaintiff alleges that Defendants' employment records will provide
8 information as to the number and location of all Class Members.

9 **B. Commonality**

10 42. There are questions of law and fact common to the Class that predominates over any
11 questions affecting only individual Class Members. These common questions of law and fact
12 include:

- 13 a. Whether Defendants failed to pay Class Members all wages owed, including
14 minimum and overtime wages;
- 15 b. Whether Defendants failed to pay Class Members wages for all hours worked,
16 including for all hours worked in excess of eight in a day and/or forty in a week;
- 17 c. Whether Defendants failed to properly pay Class Members vacation wages as
18 required under Labor Code § 227.3;
- 19 d. Whether Defendants failed to properly pay Class Members sick pay as required under
20 Labor Code § 245;
- 21 e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC
22 Wage Orders, by failing to provide Class Members with requisite meal periods or
23 premium pay in lieu thereof;
- 24 f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
25 Orders, by failing to authorize and permit Class Members to take requisite rest breaks
26 or provide premium pay in lieu thereof;
- 27 g. Whether Defendants violated Labor Code § 226(a) by providing Class Members with
28 inaccurate wage statements;

- 1 h. Whether Defendants violated Labor Code § 1194 by failing to compensate all
2 Employees during the relevant time period for all hours worked, whether regular or
3 overtime;
- 4 i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
5 wages and compensation due and owing at the time of termination of employment;
- 6 j. Whether Defendants failed to pay reporting time pay;
- 7 k. Whether Defendants violated Labor Code § 2802 by failing to reimburse all
8 necessary business expenses Defendants required them to incur in performing their
9 job duties;
- 10 l. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;
- 11 m. Whether Defendants conduct was willful; and
- 12 n. Whether Class Members are entitled to equitable relief pursuant to Business and
13 Professions Code § 17200 *et seq.*

14 **C. Typicality**

15 43. The claims of the named plaintiff is typical of those of Class Members. The Class
16 Members all sustained injuries and damages arising out of and caused by Defendants' common
17 course of conduct in violation of statutes, as well as regulations that have the force and effect of law,
18 as alleged herein.

19 **D. Adequacy of Representation**

20 44. Plaintiff will fairly and adequately represent and protect the interest of the Class
21 Members. Counsel who represents Class Members are experienced and competent in litigating
22 employment class actions.

23 **E. Superiority of Class Action**

24 45. A class action is superior to other available means for the fair and efficient
25 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
26 questions of law and fact common to all Class Members predominate over any questions affecting
27 only individual Class Members. Each Class Member has been damaged and is entitled to recovery
28 by reason of Defendants' illegal policies or practices of failing to compensate Class Members

1 properly.

2 46. As to the issues raised in this case, a class action is superior to all other methods for
3 the fair and efficient adjudication of this controversy, as joinder of all Class Members is
4 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
5 Members. Further, as the economic or other loss suffered by vast numbers of Class Members may
6 be relatively small, the expense and burden of individual actions makes it difficult for the Class
7 Members to individually redress the wrongs they have suffered. Moreover, in the event
8 disgorgement is ordered, a class action is the only mechanism that will permit the employment of a
9 fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
10 managing this case as a class action, and proceeding on a class-wide basis will permit Class
11 Members to vindicate their rights for violations they endured which they would otherwise be
12 foreclosed from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to
13 them.

14 47. Class action treatment will allow those persons similarly situated to litigate their
15 claims in the manner that is most efficient and economical for the parties and the judicial system.
16 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
17 Plaintiff contemplates the eventual issuance of notice to the proposed Class Members that would set
18 forth the subject and nature of the instant action. The Defendants' own business records can be
19 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that
20 any further notice is required additional media and/or mailings can be used.

21 48. Defendants, as prospective and actual employers of the Class Members, had a special
22 fiduciary duty to disclose to prospective Class Members the true facts surrounding Defendants' pay
23 practices, policies and working conditions imposed upon Class Members as well as the effect of any
24 alleged arbitration agreements that may have been forced upon them. In addition, Defendants knew
25 they possessed special knowledge about pay practices and policies, most notably intentionally
26 refusing to pay for all hours actually worked which should have been recorded in Defendants' pay
27 records and the consequence of the alleged arbitration agreements and policies and practices on
28 Class Members.

1 49. Class Members did not discover the fact that they were entitled to all pay under the
2 Labor Code until shortly before the filing of this lawsuit nor was there ever any discussion about
3 Plaintiff's and the Class' waiver of their Constitutional rights of trial by jury, right to collectively
4 organize and oppose unlawful pay practices under California law as well as obtain injunctive relief
5 preventing such practices from continuing. As a result, the applicable statutes of limitation were
6 tolled until such time as Plaintiff and the Class Members discovered their claims.

7 **FIRST CAUSE OF ACTION**
8 **FAILURE TO PAY MINIMUM WAGES**
9 **(Against All Defendants)**

10 50. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 51. Defendants failed to pay Class Members minimum wages for all hours worked and
13 all wages owed. Class Members would work hours and not receive all wages owed, including as
14 alleged above in connection with off the clock work, unpaid bonuses and/or commissions earned,
15 and the miscalculation of the regular rate of pay. During the relevant time period, Defendants thus
16 regularly failed to pay minimum wages to Class Members, to their detriment. Additionally,
17 Defendants had a consistent policy of failing to pay Class Members for hours worked during alleged
18 meal and rest periods for which Class Members were consistently denied, as also addressed herein.
19 Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation,
20 applicable to the Class as a whole, as a result of implementing a uniform policy and practice that
21 denied accurate compensation to Class Members as to minimum wage pay.

22 52. In California, employees must be paid at least the then applicable state minimum
23 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
24 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
25 timely pay its employees for all hours worked. Defendants failed to do so.

26 53. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:
27 "The minimum wage for employees fixed by the commission is the minimum wage to be paid to
28 employees, and the payment of a less wage than the minimum so fixed is unlawful."

1 54. The applicable minimum wages fixed by the commission for work during the
2 relevant period is found in Paragraph 4(A)-4(D) of the IWC Wage Orders.

3 55. The minimum wage provisions of California Labor Code are enforceable by private
4 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
5 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
6 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
7 balance of the full amount of this minimum wage or overtime compensation, including interest
8 thereon, reasonable attorney’s fees and costs of suit.”

9 56. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
10 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
11 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
12 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
13 all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may
14 be used as a credit against a minimum wage obligation.

15 57. California Labor Code § 1194.2 also provides for the following remedies: “In any
16 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
17 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
18 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

19 58. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
20 1197.1, Class Members are entitled to recover a penalty of \$100.00 for the initial failure to timely
21 pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee
22 minimum wages.

23 59. Pursuant to California Labor Code § 1194.2, Class Members are further entitled to
24 recover liquidated damages in an amount equal to wages unlawfully unpaid and interest thereon.

25 60. Defendants have the ability to pay minimum wages for all time worked and have
26 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
27 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Class Members.

28 61. Wherefore, Class Members are entitled to recover the unpaid minimum wages

(including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code, including § 558, and/or other applicable statutes.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

62. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

63. California Labor Code § 1194 provides that "any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action may be maintained directly against the employer in an employee's name without first filing a claim with the Division of Labor Standards and Enforcement.

64. By their conduct, as set forth herein, Defendants violated California Labor Code § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Class Members: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a workweek.

65. Defendants had a consistent policy of not paying Class Members wages for all hours worked, including by requiring off the clock work or otherwise causing them to work off the clock to avoid paying Plaintiff and the Class members all earned and owed straight time and overtime wages and other benefits, in violation of the California Labor Code, the California Code of

1 Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor Standards
2 and Enforcement. Defendants have also violated these provisions by requiring Plaintiff and other
3 similarly situated non-exempt employees to work through meal periods or remain under Defendants'
4 control when they were required to be clocked out or to otherwise work off the clock to complete
5 their daily job duties and respond to demands from customers and managers. Therefore, Class
6 Members were not properly compensated, nor were they paid overtime rates for hours worked in
7 excess of eight hours in a given day, and/or forty hours in a given week. Based on information and
8 belief, Defendants did not make available to Class Members a reasonable protocol for correcting
9 time records when Class Members worked overtime hours or to fix incorrect time entries or those
10 that Defendants unlawfully under-recorded to the Class Members' detriment. Defendants have also
11 violated these provisions by requiring Plaintiff and other similarly situated Class members to work
12 through meal periods when they were required to be clocked out or to otherwise work off the clock
13 to complete their daily job duties.

14 66. Additionally, Defendants failed to incorporate non-discretionary bonuses and/or
15 commissions into the regular rate of pay used to calculate and pay overtime pay, sick pay, and meal
16 and rest break premiums. Defendants, and each of them, have intentionally and improperly failed to
17 pay Class Members all earned and owed straight time and overtime wages and other benefits, in
18 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
19 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
20 have also violated these provisions by requiring Class Members to work through portions of their
21 meal period. Therefore, Class Members were not properly compensated, nor were they paid
22 overtime rates for hours worked in excess of eight hours in a given day, and/or forty hours in a given
23 week. Based on information and belief, Defendants did not make available to Class Members a
24 reasonable protocol for correcting time records when Class Members worked overtime hours or to
25 fix incorrect time entries.

26 67. Defendants' failure to pay Class Members the unpaid balance of regular wages owed
27 and overtime compensation, as required by California law, violates the provisions of Labor Code
28 §§ 510 and 1198, and is therefore unlawful.

1 68. Additionally, Labor Code § 558(a) provides “any employer or other person acting on
2 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
3 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
4 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
5 pay period for which the employee was underpaid in addition to an amount sufficient to recover
6 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
7 employee for each pay period for which the employee was underpaid in addition to an amount
8 sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to
9 the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in this section
10 are in addition to any other civil or criminal penalty provided by law.” Defendants have violated
11 provisions of the Labor Code regulating hours and days of work as well as the IWC Wage Orders.
12 Accordingly, Plaintiff and the Class Members seek the remedies set forth in Labor Code § 558.

13 69. Defendants’ failure to pay compensation in a timely fashion also constituted a
14 violation of California Labor Code § 204, which requires that all wages shall be paid semimonthly.
15 From four (4) years prior to the filing of this lawsuit to the present, in direct violation of that
16 provision of the California Labor Code, Defendants have failed to pay all wages and overtime
17 compensation earned by Class Members. Each such failure to make a timely payment of
18 compensation to Class Members constitutes a separate violation of California Labor Code § 204.

19 70. Class Members have been damaged by these violations of California Labor Code §§
20 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

21 71. Consequently, pursuant to the California Labor Code, including Labor Code §§ 204,
22 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B), Defendants are
23 liable to Class Members for the full amount of all their unpaid wages and overtime compensation,
24 with interest, plus their reasonable attorneys’ fees and costs, as well as the assessment of any
25 statutory penalties against Defendants, and each of them, and any additional sums as provided by
26 the Labor Code and/or other statutes.

27 ///

28 ///

THIRD CAUSE OF ACTION
FAILURE TO PROPERLY PAY VACATION WAGES
(Against All Defendants)

72. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

73. Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off her vested vacation time, all vested vacation shall be paid to her as wages at her final rate in accordance with said contract of employment or policy respecting eligibility or time served.

74. Defendants paid non-discretionary bonuses and/or commissions to Employees but Defendants failed to include these forms of remuneration in the regular rate of pay upon which vacation wages were calculated and paid.

75. Therefore, pursuant to, Plaintiff and Class Members seek to recover penalties pursuant to Labor Code § 227.3.

FOURTH CAUSE OF ACTION
FAILURE TO PROPERLY PAY SICK PAY
(Against All Defendants)

76. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

77. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time to Class Members, including at the amount, terms, and rate of compensation set forth in said law. At times relevant, Defendants have failed to properly compute the amount due for paid sick time in conformance with the pay calculation under California Labor Code § 246(1).

78. Defendants paid non-discretionary bonuses and/or commissions to Class Members but Defendants failed to include these forms of remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than calculating the amount of paid sick time due when sick time is used according to the requirements set forth in California Labor Code § 246(1), Defendants paid sick leave to Class Members at a lower rate, in violation of the law.

1 79. Therefore, Plaintiff and Class Members seek to recover penalties pursuant to Labor
2 Code § 245 *et seq.* and §§ 245 *et seq.* and 246.

3 **FIFTH CAUSE OF ACTION**

4 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

5 **(Against All Defendants)**

6 80. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
7 full herein.

8 81. Class Members regularly worked shifts greater than five (5) hours and in some
9 instances, greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ
10 someone for a shift of more than five (5) hours without providing him or her with a meal period of
11 not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or
12 her with a second meal period of not less than thirty (30) minutes.

13 82. As discussed above, Defendants failed to provide Class Members with meal periods
14 as required under the Labor Code. Defendants placed their needs over Class Members lawful meal
15 breaks and this resulted in Class Members consistently having to work through their scheduled meal
16 breaks because the demands of the job would not avail them the opportunity to take a lawfully
17 uninterrupted and off-duty meal break. Furthermore, upon information and belief, on the occasions
18 when Class Members worked more than ten (10) hours in a given shift, they did so without receiving
19 a second uninterrupted thirty (30) minute meal period as required by law.

20 83. Defendants thus failed to provide Class Members with meal periods as required by
21 the Labor Code, including by not providing them with the opportunity to take meal breaks, by
22 providing them late or for less than thirty (30) minutes, or by requiring them to perform work during
23 breaks.

24 84. Moreover, Defendants failed to compensate Class Members for each meal period not
25 provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of the
26 applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee a
27 meal period in accordance with this section, the employer shall pay the employee one (1) hour of
28 pay at the employee's regular rate of compensation for each workday that the meal period is not

1 provided. Defendants failed to compensate Class Members for each meal period not provided or
2 inadequately provided, as required under Labor Code § 226.7. Additionally, upon information and
3 belief, when Defendants did pay meal period premiums, they did so at the normal regular rate of
4 pay without factoring in all forms or remuneration/compensation or by otherwise incorrectly
5 calculating the regular rate.

6 85. Therefore, pursuant to Labor Code § 226.7 and the applicable IWC Wage Order,
7 paragraph 11, Class Members are entitled to damages in an amount equal to one (1) hour of wages
8 at their effective hourly rates of pay for each meal period not provided or deficiently provided, a
9 sum to be proven at trial, as well as the assessment of any statutory penalties against the Defendants,
10 and each of them, in a sum as provided by the Labor Code and other statutes.

11 **SIXTH CAUSE OF ACTION**

12 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

13 **(Against All Defendants)**

14 86. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
15 full herein.

16 87. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide
17 that employers must authorize and permit all employees to take rest periods at the rate of ten (10)
18 minutes net rest time per four (4) work hours.

19 88. Class Members consistently worked consecutive four (4) hour shifts and were
20 generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize
21 and permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC Wage
22 Order, Class Members were entitled to paid rest breaks of not less than ten (10) minutes for each
23 consecutive four (4) hour shift, and Defendants failed to provide Class Members with timely rest
24 breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants placed
25 their needs over Class Members lawful rest breaks, and this resulted in Class Members consistently
26 having to work through their scheduled rest breaks because the demands of the job would not avail
27 them the opportunity to take a lawfully uninterrupted and off-duty rest break.

28 89. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide

1 that if an employer fails to provide an employee a rest period in accordance with this section, the
2 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation
3 for each workday that the rest period is not provided.

4 90. Defendants, and each of them, have therefore intentionally and improperly denied
5 rest periods to Class Members in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of the
6 applicable IWC Wage Orders.

7 91. Defendants failed to authorize and permit Class Members to take rest periods, as
8 required by the Labor Code. Moreover, Defendants did not compensate Class Members with an
9 additional hour of pay at each Class Member's effective hourly rate for each day that Defendants
10 failed to provide them with adequate rest breaks, as required under Labor Code § 226.7.

11 92. Therefore, pursuant to Labor Code § 226.7 and paragraph 12 of the applicable IWC
12 Wage Orders, Class Members are entitled to damages in an amount equal to one (1) hour of wages
13 at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to
14 be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each
15 of them, in a sum as provided by the Labor Code and/or other statutes.

16 **SEVENTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS UNDER**

18 **LABOR CODE § 226(a)**

19 **(Against All Defendants)**

20 93. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
21 full herein.

22 94. California Labor Code § 226(a) requires an employer to furnish each of his or her
23 employees with an accurate, itemized statement in writing showing the gross and net earnings, total
24 hours worked, and the corresponding number of hours worked at each hourly rate; these statements
25 must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay
26 the employee's wages; or, if wages are paid by cash or personal check, these statements may be
27 given to the employee separately from the payment of wages; in either case the employer must give
28 the employee these statements twice a month or each time wages are paid.

1 95. Defendants failed to provide Class Members with accurate itemized wage statements
2 in writing, as required by the Labor Code. By way of example, the wage statements given to Class
3 Members failed to incorporate non-discretionary bonuses and/or commissions into the regular rate
4 of pay used to calculate and pay overtime compensation, sick pay, and meal and rest break
5 premiums. Thus, the wage statements do not comply with Labor Code § 226(a)(9). Additionally,
6 the wage statements given to Class Members failed to accurately account for unpaid wages and
7 overtime because their actual hours worked were under-reported due to off the clock work.
8 Moreover, the wage statements failed to accurately account for bonuses and/or commissions earned.
9 Additionally, the wage statements given to Class Members failed to accurately account for premium
10 pay for deficiently provided meal periods and rest breaks.

11 96. Throughout the liability period, Defendants intentionally failed to furnish to Class
12 Members, upon each payment of wages, itemized statements accurately showing: (1) gross wages
13 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any
14 applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the
15 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only
16 the last four digits of his or her social security number or an employee identification number other
17 than a social security number, (8) the name and address of the legal entity that is the employer and
18 (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours
19 worked at each hourly rate by the employee pursuant to Labor Code § 226, amongst other statutory
20 requirements. Defendants knowingly and intentionally failed to provide Class Members with such
21 timely and accurate wage and hour statements.

22 97. Class Members suffered injury as a result of Defendants' knowing and intentional
23 failure to provide them with the accurate wage and hour statements as required by law and are
24 presumed to have suffered injury and be entitled to penalties under Labor Code § 226(e), as the
25 Defendants have failed to provide wage statements with accurate and complete information as
26 required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and Class Members
27 cannot promptly and easily determine from the wage statement alone one or more of the following:
28 (i) The amount of the gross wages or net wages paid to the employee during the pay period or any

of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period, (iii) The name and address of the employer and, (iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number. For purposes of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an objective standard] would be able to readily ascertain the information without reference to other documents or information.

98. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code § 226(a), Class Members suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

99. Pursuant to Labor Code §§ 226(a) and 226(e) and 1174, and the applicable IWC Wage Order, paragraph 7(B), Class Members are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys’ fees.

EIGHTH CAUSE OF ACTION

FAILURE TO MAINTAIN RECORDS UNDER LABOR CODE §§ 1174 and 1174.5

(Against All Defendants)

100. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

101. California Labor Code § 1174 requires that all employers shall keep accurate time and wage records for all employees. California Labor Code § 1174.5 further requires that any employee suffering injury due to a willful violation of the aforementioned obligations may seek damages, including civil penalties, from the employer.

102. During the course of Plaintiff’s and Class Members’ employment, Defendants

consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as required by California Labor Code § 1174 by failing to pay Plaintiff and Class Members proper wages, overtime, and premium pay as discussed above.

103. Accordingly, Defendants are liable for civil penalties pursuant to the California Labor Code §§ 1174.5. for the three (3) years prior to the filing of this Complaint.

NINTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES UNDER LABOR CODE § 203

(Against All Defendants)

104. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

105. Numerous Class Members are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

106. Defendants failed to pay these Class Members all wages due and certain at the time of termination or within seventy-two (72) hours of resignation.

107. The wages withheld from these Class Members by Defendants remained due and owing for more than thirty (30) days from the date of separation from employment.

108. Defendants failed to pay Class Members without abatement, all wages as defined by applicable California law. Class Members were not paid all regular and overtime wages because Defendants failed to pay all wages owed by failing to pay all bonuses and/or commissions earned; by failing to pay for all hours worked due to off the clock work; and by failing to pay for all hours worked by failing to incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to calculate and pay for overtime, vacation and sick pay, and meal and rest break premiums, and failing to pay meal and rest break premiums owed, as further detailed in this Complaint. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

109. Defendants' failure to pay wages, as alleged entitles these Class Members to penalties under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

TENTH CAUSE OF ACTION
FOR FAILURE TO PAY REPORTING TIME PAY
(Against All Defendants)

110. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

111. The IWC Wage Orders, require that reporting time pay be provided to any employee who is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work.

112. Plaintiff is informed and believes and thereon alleges that all or substantially all the Class Members are subject to Defendants' policies and practices requiring them to call in or otherwise show up to work, but not being paid half their usual or scheduled day's work when sent home without being put to work or working less than half of the scheduled day's work.

113. Therefore, Class Members are owed the unpaid balance of said wages pursuant to the Wage order according to proof at trial, interest pursuant to Labor Code §§ 218.6 and 1194(a), Civil Code §§ 3287 and § 3289, and reasonable attorneys' fees and costs and/or penalties pursuant to Labor Code § 558(a).

ELEVENTH CAUSE OF ACTION
REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802
(Against All Defendants)

114. Plaintiff re-alleges and incorporates all preceding paragraphs as though set forth in full herein.

115. Under Labor Code § 2802(a) an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

116. Defendants have regularly required Plaintiff to incur business expenses in the course of performing her required job duties for Defendants including for cell phone expenses. Upon information and belief, Class Members incurred similar costs. These expenses incurred by Plaintiff and Class Members were necessary and required of them in performing their assigned job duties,

1 but Defendants failed to reimburse Plaintiff and Class Members for all such necessary expenditures,
2 thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and
3 the applicable provisions of the IWC Wage Orders, paragraph 9.

4 117. As a result of the unlawful acts of Defendants, Class Members have been deprived
5 of reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
6 plus interest and penalties thereon, attorneys' fees, and costs.

7 **TWELFTH CAUSE OF ACTION**
8 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***
9 **(Against All Defendants)**

10 118. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 119. Plaintiff, on behalf of herself, Class Members, and the general public, brings this
13 claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as
14 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Class
15 Members and the general public. Plaintiff seeks to enforce important rights affecting the public
16 interest within the meaning of Code of Civil Procedure § 1021.5.

17 120. Plaintiff is a "person" within the meaning of Business & Professions Code
18 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
19 relief, restitution, and other appropriate equitable relief.

20 121. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
21 practices. By the conduct alleged herein, Defendants' practices were deceptive and fraudulent in
22 that Defendants' policy and practice failed to provide the required amount of compensation for
23 missed meal and rest breaks, and failed to adequately compensate Class Members for all hours
24 worked, due to systematic business practices as alleged herein that cannot be justified, pursuant to
25 the applicable California Labor Code and Industrial Welfare Commission requirements in violation
26 of California Business and Professions Code §§ 17200, *et seq.*, and for which this Court should issue
27 injunctive and equitable relief, pursuant to California Business & Professions Code § 17203,
28 including restitution of wages wrongfully withheld.

1 122. Wage-and-hour laws express fundamental public policies. Paying employees their
2 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental public
3 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
4 to enforce minimum labor standards, to ensure that employees are not required or permitted to work
5 under substandard and unlawful conditions, and to protect law-abiding employers and their
6 employees from competitors who lower costs to themselves by failing to comply with minimum
7 labor standards.

8 123. Defendants have violated statutes and public policies. Through the conduct alleged
9 in this Complaint Defendants have acted contrary to these public policies, have violated specific
10 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
11 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff, and
12 all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
13 guaranteed to all employees under the law.

14 124. Defendants' conduct, as alleged above, constitutes unfair competition in violation of
15 the Business & Professions Code § 17200 *et seq.*

16 125. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
17 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
18 reasonable care should have known that their conduct was unlawful; therefore their conduct violates
19 the Business & Professions Code § 17200 *et seq.*

20 126. By the conduct alleged herein, Defendants have engaged and continue to engage in
21 a business practice which violates California and federal law, including but not limited to, the
22 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
23 Code including Sections 201, 202, 203, 204, 210, 223, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558,
24 558.1, 1182.12, 1194, 1194.2, 1197, 1198, 1199, 2751 and 2802, for which this Court should issue
25 declaratory and other equitable relief pursuant to California Business & Professions Code § 17203
26 as may be necessary to prevent and remedy the conduct held to constitute unfair competition,
27 including restitution of wages wrongfully withheld.

28 127. As a proximate result of the above-mentioned acts of Defendants, Class Members

1 have been damaged, in a sum to be proven at trial.

2 128. Unless restrained by this Court Defendants will continue to engage in such unlawful
3 conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make
4 such orders or judgments, including the appointment of a receiver, as may be necessary to prevent
5 the use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited
6 by the Business & Professions Code, including but not limited to the disgorgement of such profits
7 as may be necessary to restore Class Members to the money Defendants have unlawfully failed to
8 pay.

9 **THIRTEENTH CAUSE OF ACTION**
10 **VIOLATION OF LABOR CODE § 2698, ET SEQ.**
11 **(Against All Defendants)**

12 129. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
13 full herein.

14 130. Plaintiff and the Employees in the Class are also aggrieved employees as defined
15 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and either
16 were or are employed by the alleged violators, Defendants (“Aggrieved Employees”) during the
17 relevant time period.

18 131. In failing to pay Aggrieved Employees minimum wages and overtime, not providing
19 proper meal and rest periods, failing to provide accurate wage statements, and failing to Pay
20 Employees upon termination or timely upon resignation, all discussed above, Defendants failed to
21 timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code §
22 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages
23 paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable
24 IWC Wage Orders.

25 132. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
26 for Defendants’ violation of Labor Code provisions included under Labor Code 2699.5, including
27 the penalty provisions, without limitation, based, inter alia, on the following California Labor Code
28 sections: 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1,

1 1194.2, 1197, 1197.1, 1198, 1199, and 2698 *et seq.*

2 133. More specifically, after complying with the notice procedures of Labor Code §
3 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General and
4 other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
5 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
6 including as follows:

7 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
8 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
9 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
10 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
11 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510, 558,
12 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to
13 Labor Code § 2699(g)(1);

14 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
15 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
16 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
17 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
18 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
19 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558,
20 including sections 558(a)(1)-(3), 1199, and 2699(f)(2), and also for attorneys' fees and costs
21 pursuant to Labor Code § 2699(g)(1);

22 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
23 Plaintiff and Aggrieved Employees with accurate, itemized wage statements and failure to maintain
24 employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and
25 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil
26 and statutory penalties and wages available and applicable under Labor Code §§ 226€, 226.3, 558,
27 1174.5, 1199, 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for
28 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing

1 inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a),
2 Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3,
3 which in addition to other penalties provided by law, subjects Defendants to “a penalty in the amount
4 of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand
5 dollars (\$1,000) per employee for each violation in a subsequent citation, ...”

6 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
7 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
8 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
9 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
10 of the applicable IWC Wage Orders, and also for attorneys’ fees and costs pursuant to Labor Code
11 § 2699(g)(1);

12 (e) All Alleged Violations of the IWC Wage Orders and Other Labor Code
13 Sections: For any above addressed violation of the applicable provisions of the IWC Wage
14 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §
15 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and
16 paragraph 20 of the applicable IWC Wage Orders, and for attorneys’ fees and costs pursuant to
17 Labor Code § 2699(g)(1).

18 134. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also seeks
19 the penalties and remedies set forth in Labor Code § 558, which states:

20 (a) Any employer or other person acting on behalf of an employer who violates, or
21 causes to be violated, a section of this chapter or any provision regulating hours and days of work
22 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1)
23 For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
24 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
25 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each
26 pay period for which the employee was underpaid in addition to an amount sufficient to recover
27 underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected
28 employee.

1 (b) If upon inspection or investigation the Labor Commissioner determines that a person
2 had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter,
3 or any provision regulation hours and days of work in any order of the Industrial Welfare
4 Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting,
5 and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a
6 violation of this chapter shall be the same as those set out in Section 1197.1.

7 (c) The penalties provided for in this section are in addition to any other civil or criminal
8 penalty provided by law.

9 135. Plaintiff has exhausted his administrative remedies by sending a certified letter to
10 the LWDA and Defendants postmarked on **April 22, 2024**, addressing in detail the specific
11 provisions of the Labor Code Defendants have violated and addressing the facts and legal theories
12 to support the alleged violations and requested penalties. The LWDA has not provided notice of
13 its intent to investigate the alleged violations within 65 calendar days of the postmark date of the
14 letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed
15 herein and in the PAGA Notice Letter and the original Complaint.

16 **RELIEF REQUESTED**

17 WHEREFORE, Plaintiff prays for the following relief:

- 18 1. For an order certifying this action as a class action;
- 19 2. For compensatory damages in the amount of the unpaid minimum wages for work
20 performed by Class Members and unpaid overtime compensation from at least four (4) years prior
21 to the filing of this action, as may be proven;
- 22 3. For liquidated damages in the amount equal to the unpaid minimum wage and interest
23 thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 24 4. For compensatory damages in the amount of all unpaid wages, including overtime
25 and double-time pay, as may be proven;
- 26 5. For penalties pursuant to Labor Code § 227.3, as may be proven;
- 27 6. For restitution and/or damages for all amounts unlawfully withheld from the wages
28 for all Class Members in violation of Labor Code § 246, as may be proven;

1 7. For compensatory damages in the amount of the hourly wage made by Class
2 Members for each missed or deficient meal period where no premium pay was paid therefor from
3 four (4) years prior to the filing of this action, as may be proven;

4 8. For compensatory damages in the amount of the hourly wage made by Class
5 Members for each day requisite rest breaks were not provided or were deficiently provided where
6 no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as
7 may be proven;

8 9. For penalties pursuant to Labor Code § 226(e) for Class Members, as may be proven;

9 10. For penalties pursuant to Labor Code § 1174.5, as may be proven;

10 11. For penalties pursuant to Labor Code § 203 for all Class Members who quit or were
11 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

12 12. For restitution and/or damages for all amounts unlawfully withheld from the wages
13 for all Class Members in violation of Labor Code § 2802, as may be proven;

14 13. For restitution for unfair competition pursuant to Business & Professions Code
15 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

16 14. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

17 15. For an order enjoining Defendants and their agents, servants, and employees, and all
18 persons acting under, in concert with, or for them, from acting in derogation of any rights or duties
19 adumbrated in this Complaint;

20 16. For other wages and penalties under the Labor Code as may be proven;

21 17. For all general, special, and incidental damages as may be proven;

22 18. For an award of pre-judgment and post-judgment interest;

23 19. For an award providing for the payment of the costs of this suit;

24 20. For an award of attorneys' fees; and

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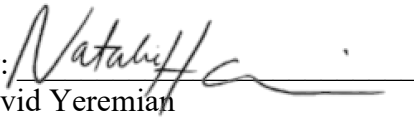
1 21. For such other and further relief as this Court may deem proper and just.

2 DATED: August 29, 2024

D.LAW, INC.

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By: 

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David Yermian

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Natalie Haritonian

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Matthew Carraher

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Attorneys for Plaintiff SAMANTHA
VARELA AYALA and all others similarly
situated

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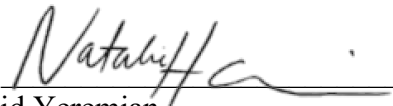
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

DATED: August 29, 2024

D.LAW, INC.

By: 
David Yeremian
Natalie Haritounian
Matthew Carraher
Attorneys for Plaintiff SAMANTHA
VARELA AYALA and all others similarly
situated

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

FIRST AMENDED CLASS COMPLAINT on Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am “readily familiar” with this firm’s practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

[X] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

Executed on August 29, 2024, at Glendale, California.


Silvia Pimentel