

JAMES HAWKINS APLC
James R. Hawkins (SBN 192925)
Christina M. Lucio (SBN 253677)
Mitchell J. Murray (SBN 285691)
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676
James@Jameshawkinsaplc.com
Christina@Jameshawkinsaplc.com

Attorneys for Plaintiff Brandy L. Skutley

MATERN LAW GROUP, PC
MATTHEW J. MATERN (SBN 159798)
MIKAEL H. STAHLE (SBN 182599)
1230 Rosecrans Avenue, Suite 200
Manhattan Beach, California 90266
Telephone: (310) 531-1900
Facsimile: (310) 531-1901
mmatern@maternlawgroup.com
mstahle@maternlawgroup.com

Attorneys for Plaintiff Timothy Miller

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF YOLO

BRANDY L. SKUTLEY, individually
and on behalf of herself and all others
similarly situated; TIMOTHY MILLER,
individually and on behalf of himself and
all others similarly situated,

Plaintiff,

v.

WALGREEN CO., an Illinois
Corporation, and DOES 1-50, inclusive.

Defendants.

Case No. CV2023-0740

Assigned for All Purposes To:
The Hon. Timothy L. Fall
Dept. 14

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. Failure to Pay Minimum Wages**
- 2. Failure to Pay Overtime Owed**
- 3. Failure to Provide Lawful Meal
Periods**
- 4. Failure to Authorize and Permit Rest
Periods**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 5. Failure to Timely Pay Wages During Employment**
- 6. Failure to Timely Pay Wages Owed Upon Separation From Employment**
- 7. Knowing and Intentional Failure to Comply with Itemized Wage Statement Provisions**
- 8. Failure to Maintain Required Records**
- 9. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**
- 10. Violation of the Unfair Competition Law**
- 11. Unfair and Unlawful Business Practices**
- 12. Civil Penalties Under Private Attorneys’ General Act, Labor Code Section 2698 *et seq.***

DEMAND FOR JURY TRIAL

1 **JURISDICTION AND VENUE**

2 1. This Court has jurisdiction over this action pursuant to Code of Civ. Proc. §
3 410.10. Plaintiffs bring this action on behalf of themselves and all others similarly situated
4 pursuant to Code of Civ. Proc. § 382 and on behalf of themselves and other aggrieved
5 employees pursuant to the Labor Code Private Attorneys General Act (PAGA), Labor Code
6 §§ 2698, *et seq.*

7 2. Venue is proper in this court pursuant to Code of Civ. Proc. §§ 395 and 395.5.
8 Defendants transact business and may be found within Yolo County. The course of conduct,
9 breaches, violations, and unlawful patterns and practices alleged herein occurred in Yolo
10 County and Los Angeles County.

11 3. This action is brought as a Class Action on behalf of Plaintiffs and similarly
12 situated employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The
13 monetary damages and restitution sought by Plaintiffs exceeds the minimum jurisdiction
14 limits of the California Superior Court and will be established according to proof at trial.

15 4. This Court has jurisdiction over this action pursuant to the California
16 Constitution Article VI §10, which grants the California Superior Court original jurisdiction
17 in all causes except those given by statute to other courts. The statutes under which this
18 action is brought do not give jurisdiction to any other court.

19 5. This Court has jurisdiction over this Action pursuant to California Code of
20 Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

21 6. This Court has jurisdiction over Defendants because, upon information and
22 belief, each Defendant is either a resident of California, has sufficient minimum contacts in
23 California, or otherwise intentionally avails itself of the California market so as to render the
24 exercise of jurisdiction over them by the California Courts consistent with traditional notions
25 of fair play and substantial justice. Defendants have done and are doing business throughout
26 California and Yolo County.

27 7. The unlawful acts alleged herein have a direct effect on Plaintiffs and the other
28 similarly situated Non-Exempt Employees within Yolo County and it is believed that

1 Defendants have employed hundreds of Class Members as Non-Exempt Employees in Yolo
2 County.

3 8. The California Superior Court also has jurisdiction in this matter because the
4 individual claims of the Class Members described herein are presently believed to be under
5 the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and
6 the aggregate potential damages and recovery by all of the claims of the Plaintiffs' Class,
7 including attorneys' fees, placed in controversy by Plaintiffs' class-wide claims, is presently
8 believed to be under the five million dollar (\$5,000,000.00) threshold of the Class Action
9 Fairness Act of 2005. Further, there is no federal question at issue, as the issues herein are
10 based solely on California statutes and law, including the Labor Code, IWC Wage Orders,
11 the California Code of Civil Procedure, the California Civil Code, and the California
12 Business and Professions Code.

13 9. Venue is proper in this Court because one or more of the Defendants reside,
14 transact business, or have offices in this County, Plaintiff is a resident of this County, and
15 the acts or omissions alleged herein took place in this County.

16 **PLAINTIFFS**

17 10. Plaintiffs seek to represent the following individuals ("Class Members"): All
18 current and former hourly-paid, non-exempt employees who worked for Defendant Walgreen
19 Co. at one of its California distribution centers during the Class Period from June 30, 2020
20 through April 1, 2024.

21 11. Plaintiffs seek to represent the following aggrieved employees: All current and
22 former hourly-paid, non-exempt employees who worked for Defendant Walgreen Co. at one
23 of its California distribution centers during the PAGA Period from April 10, 2022 through
24 April 11, 2024 ("Aggrieved Employees").

25 12. At all relevant times herein mentioned, Plaintiff Brandy Skutley:

26 a. Was employed by Defendants from approximately January 2022
27 through April 2022 as a full-time and hourly employee in the position of Order Picker in
28 Woodland, California;

1 b. Was scheduled to work approximately 4 days per week and ten hours
2 per day but was not compensated for all hours worked;

3 c. Was denied meal periods and meal period premium wages, rest periods
4 and rest period premium wages, and accurate itemized wage statements;

5 d. Was not paid all wages earned during and upon termination of her
6 employment; and

7 e. Was a member of the Class identified in paragraph 3, above.

8 13. At all relevant times herein mentioned, Plaintiff Timothy Miller:

9 a. Was employed by Defendants from approximately April 2004 to
10 November 2022 as a full time hourly employee in the position of Master Technician Lead
11 in Moreno Valley, California;

12 b. Was scheduled to work, and worked, more than eight (8) hours a day,
13 sometimes up to seven days a week but was not compensated for all hours worked;

14 c. Was denied meal periods and meal period premium wages, rest periods
15 and rest period premium wages, and accurate itemized wage statements;

16 d. Was not reimbursed for all work-related business expenses;

17 e. Was not paid all wages earned upon termination of employment; and

18 f. Was a member of the Class identified in paragraph 3, above.

19 **CLASS ALLEGATIONS**

20 14. Plaintiffs brings this action on their own behalf, as well as on behalf of each
21 and every other person similarly situated, and thus seek class certification under California
22 Code of Civil Procedure §382.

23 15. All claims alleged herein arise under California law for which Plaintiffs seek
24 relief as authorized by California law.

25 16. The proposed class is comprised of and defined as: **all current and former**
26 **hourly-paid, non-exempt employees who worked for Defendant Walgreen Co. at one of**
27 **its California distribution centers during the Class Period** (Hereinafter collectively
28 referred to as the “Class” or “Class Members”).

1 17. Plaintiffs also seek to represent Subclasses included in the Plaintiffs' Class,
2 which are composed of Class Members satisfying the following definitions:

3 a. All Class Members who were not paid at least minimum wage for all
4 hours worked (collectively "**Minimum Wage Subclass**");

5 b. All Class Members who were not accurately paid overtime for hours
6 worked over eight in a day or over forty in a workweek (collectively "**Overtime Subclass**");

7 c. All Class Members who worked more than five (5) hours in a workday
8 and were not provided with a timely, uninterrupted lawful meal period of net thirty (30)
9 minutes, and were not paid compensation of one hour premium wages at the employee's
10 regular rate in lieu thereof (hereinafter collectively referred to as the "**First Meal Period**
11 **Subclass**");

12 d. All Class Members who worked more than ten hours in a workday and
13 were not provided with a timely, uninterrupted lawful second meal period of thirty (30)
14 minutes, and were not paid compensation of one hour premium wages at the employee's
15 regular rate in lieu thereof (hereinafter collectively referred to as the "**Second Meal Period**
16 **Subclass**");

17 e. All Class Members who worked more than 3.5 hours or major fraction
18 thereof in a workday and were not provided with a timely, uninterrupted lawful rest period,
19 and were not paid compensation of one hour premium wages at the employee's regular rate
20 in lieu thereof (hereinafter collectively referred to as the "**Rest Period Subclass**");

21 f. All Class Members who did not receive all owed wages at time of
22 separation or within 72 hours in the case of resignation (hereinafter collectively referred to
23 as the "**Waiting Time Subclass**");

24 g. All Class Members who were not provided with accurate and complete
25 itemized wage statements (hereinafter collectively referred to as the "**Inaccurate Wage**
26 **Statement Subclass**");

27 h. All Class Members who were employed by Defendants and subject to
28 Defendant's Unfair Business Practices (hereinafter collectively referred to as the "**Unfair**

1 **Business Practices Subclass”).**

2 18. Plaintiffs reserve the right, under Rule 3.765, California Rules of Court, to
3 amend or modify the descriptions of the Class and Subclasses to provide greater specificity
4 as appropriate, or if it should be deemed necessary by the Court or to further divide the Class
5 Members into additional Subclasses or to limit the Subclasses to particular issues. Any
6 reference herein to the Class Members or the Plaintiffs’ Class includes the members of each
7 of the Subclasses.

8 19. As set forth in further detail below, this action has been brought and may
9 properly be maintained as a class action under the provisions of section 382 of the Code of
10 Civil Procedure because there is a well-defined community of interest in the litigation, and
11 the proposed Class and Subclasses are easily ascertainable through Defendants’ records.

12 a. Numerosity: The members of the Class and Subclasses are so numerous
13 that joinder of all members of the Class and Subclasses would be unfeasible and impractical.
14 The membership of the entire Class and Subclasses is unknown to Plaintiffs at this time,
15 however, the Class is estimated to be hundreds of individuals. Accounting for employee
16 turnover during the relevant periods necessarily increases this number substantially.
17 Plaintiffs allege Defendants’ employment records would provide information as to the
18 number and location of all Class Members. Joinder of all members of the proposed Class is
19 not practicable.

20 b. The proposed class is easily ascertainable. The number and identity of
21 the class members are determinable from Defendants’ payroll records and time records for
22 each class member.

23 c. Commonality: There are common questions of law and fact as to the
24 Class and Subclasses that predominate over questions affecting only individual Class
25 Members. These common questions of law and fact include, without limitation:

- 26 1. Whether Defendants accurately paid Class Members for all hours
27 worked;
28

- 1 2. Whether Defendants knew or should have known that Class Members
- 2 were required to perform work off the clock;
- 3 3. Whether Defendants required Class Members to work off the clock;
- 4 4. Whether Defendants accurately calculated and paid all Class Members
- 5 overtime premiums for the hours which Plaintiffs and Class Members
- 6 worked in excess of eight (8) hours per day and/or forty (40) hours per
- 7 week;
- 8 5. Whether Defendants had a valid alternative workweek schedule;
- 9 6. Whether Defendants had a policy and practice of providing lawful,
- 10 timely meal periods in accordance with Labor Code § 512, as well as
- 11 the applicable Industrial Welfare Commission (“IWC”) Wage Orders;
- 12 7. Whether Defendants had a policy and practice of complying with Labor
- 13 Code section 226.7 and IWC Wage Orders on each instance that a
- 14 lawful, timely 30-minute uninterrupted meal period was not provided;
- 15 8. Whether Defendants failed to timely pay all wages upon separation in
- 16 accordance with Labor Code sections 201-202;
- 17 9. Whether Defendants failed to maintain accurate records of Class
- 18 Members' earned wages, work periods, meal periods and deductions;
- 19 10. Whether Defendants engaged in unfair competition in violation of
- 20 section 17200 et seq. of the Business and Professions Code;
- 21 11. Whether Defendants’ conduct was willful and/or reckless;
- 22 12. Whether Defendants failed to provide accurate itemized wage
- 23 statements in violation of Labor Code § 226; and
- 24 13. The appropriate amount of damages, restitution, and/or monetary
- 25 penalties resulting from Defendants’ violations of California law.
- 26 d. Typicality: Plaintiffs are qualified to and will fairly and adequately
- 27 protect the interests of each member of the Class and Subclasses with whom he has a well-
- 28 defined community of interest. Plaintiffs’ claims herein alleged are typical of those claims

1 which could be alleged by any member of the Class and/or Subclasses, and the relief sought
2 is typical of the relief which would be sought by each member of the Class and/or Subclasses
3 in separate actions. All members of the Class and/or Subclasses have been similarly harmed
4 by Defendants' failure to provide lawful meal and rest periods, failure to provide accurate
5 wage statements, failure to timely pay wages at termination, failure to pay minimum wages,
6 and failure to accurately pay all wages earned including all owed premium, reporting and
7 overtime wages, all due to Defendants' policies and practices that affected each member of
8 the Class and/or Subclasses similarly. Further, Defendants benefited from the same type of
9 unfair and/or wrongful acts as to each member of the Class and/or Subclasses.

10 e. Adequacy: Plaintiffs are qualified to and will fairly and adequately
11 protect the interests of each member of the Class and/or Subclasses with whom he has a well-
12 defined community of interest and typicality of claims, as demonstrated herein. Plaintiffs
13 acknowledges that she has an obligation to make known to the Court any relationships,
14 conflicts, or differences with any member of the Class and/or Subclasses, and no such
15 relationships or conflicts are currently known to exist. Plaintiffs' attorneys and the proposed
16 counsel for the Class and Subclasses are versed in the rules governing class action discovery,
17 certification, litigation, and settlement and experienced in handling such matters. Other
18 former and current employees of Defendants may also serve as representatives of the Class
19 and Subclasses if needed.

20 f. Superiority: The nature of this action makes the use of class action
21 adjudication superior to other methods. A class action will achieve economies of time, effort,
22 judicial resources, and expense, which would not be achieved with separate lawsuits. The
23 prosecution of separate actions by individual members of the Class and/or Subclasses would
24 create a risk of inconsistent and/or varying adjudications with respect to the individual
25 members of the Class and/or Subclasses, establishing incompatible standards of conduct for
26 the Defendants, and resulting in the impairment of the rights of the members of the Class
27 and/or Subclasses and the disposition of their interests through actions to which they were
28 not parties. Thus, a class action is superior to other available means for the fair and efficient

1 adjudication of this controversy because individual joinder of all Class Members is not
2 practicable, and questions of law and fact common to the Class predominate over any
3 questions affecting only individual Class Members. Each member of the Class has been
4 damaged and is entitled to recovery by reason of Defendants' unlawful policies and practices
5 that affected each member of the Class and/or Subclasses similarly. Class action treatment
6 will allow those similarly situated persons to litigate their claims in the manner that is most
7 efficient and economical for both parties and the judicial system. Plaintiffs are unaware of
8 any difficulties that are likely to be encountered in the management of this action that would
9 preclude its maintenance as a class action.

10 g. Public Policy Considerations: Employers in the state of California
11 violate employment and labor laws every day. However, current employees are often afraid
12 to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful
13 of bringing actions because they believe their former employers may damage their future
14 endeavors through negative references and/or other means. The nature of this action allows
15 for the protection of current and former employees' rights without fear of retaliation or
16 damage. Additionally, the citizens of California have a significant interest in ensuring
17 employers comply with California's labor laws and in ensuring those employers who do not
18 are prevented from taking further advantage of their employees.

19 **DEFENDANTS**

20 20. Plaintiffs are informed and believe, and based on that information and belief
21 alleges, that Defendant Walgreen Co., is, and at all relevant times herein mentioned:

- 22 a. Was an Illinois corporation;
23 b. Was duly qualified to conduct business, and was conducting business,
24 in the State of California, including the County of Yolo; and
25 c. Maintained offices and facilities in the State of California, including
26 the County of Yolo.

1 21. Plaintiffs are informed and believe, and based on that information and belief
2 alleges, that Defendant Walgreens Distribution Center. is, and at all relevant times herein
3 mentioned:

- 4 a. Was a business entity of unknown form;
5 b. Was duly authorized to conduct business, and was conducting business,
6 in the State of California, including the County of Yolo; and
7 c. Maintained offices and facilities and engages in illegal payroll practices
8 or policies in the County of Yolo in the State of California.

9 22. Plaintiffs are informed and believe, and based on that information and belief
10 alleges, that Defendant Walgreens Boots Alliance, Inc., is, and at all relevant times herein
11 mentioned:

- 12 a. Was a Delaware corporation;
13 b. Was duly authorized to conduct business, and was conducting business,
14 in the State of California, including the County of Yolo; and
15 c. Maintained offices and facilities, and engages in illegal payroll
16 practices or policies in, the County of Yolo.

17 23. The true names and capacities, whether individual, corporate, partnership,
18 associate, or otherwise, of Defendants Does 1 through 100, inclusive (“Doe Defendants”),
19 are unknown to Plaintiffs who therefore sues these Doe Defendants by such fictitious names
20 pursuant to Cal. Code of Civ. Proc. § 474. Plaintiffs will seek leave to amend this complaint
21 to allege their true names and capacities when they are ascertained.

22 24. Plaintiffs are informed and believe, and based on that information and belief
23 allege, that each of the Defendants named in this complaint, including each of the Doe
24 Defendants, is responsible in some manner for one or more of the events and happenings,
25 and proximately caused the injuries and damages, hereinafter alleged.

26 25. Plaintiffs are informed and believe, and based on that information and belief
27 allege, that each of the Defendants named in this complaint, including each of the Doe
28 Defendants, is, and at all relevant times herein mentioned was, the agent, servant, and/or

1 employee of each of the other Defendants, and that each Defendant was acting within the
2 course and scope of his, her, or its authority as the agent, servant, and/or employee of each
3 of the other Defendants. Consequently, each Defendant is jointly and severally liable to
4 Plaintiffs and the other members of the Class for the damages sustained as a proximate result
5 of their conduct.

6 **BACKGROUND ALLEGATIONS**

7 26. Defendants are the employers of all non-exempt and hourly employees
8 employed in “Walgreens” branded stores in California, which number approximately 3,000
9 in total.

10 27. Plaintiffs and the Class Members were, and at all times pertinent hereto, have
11 been non-exempt employees within the meaning of the California Labor Code, and the
12 implementing rules and regulations of the IWC California Wage Orders. They are subject to
13 the protections of the IWC Wage Orders and the Labor Code.

14 28. Plaintiffs are informed and believe, and thereon allege, that Defendants are
15 and were advised by skilled lawyers and other professionals, employees, and advisors with
16 knowledge of the requirements of California’s wage and employment laws.

17 29. All Class Members are similarly situated in that they are all subject to
18 Defendants’ uniform policies and systemic practices as specified herein.

19 30. In addition, Plaintiffs and the Class Members worked in excess of eight (8)
20 hours in day and/or over forty (40) hours in a workweek, but were not properly paid for such
21 time at a rate of time and one-half the employee’s regular rate of pay per hour.

22 31. Upon information and belief, Defendants failed to incorporate all forms of
23 non-discretionary compensation into the regular rate, including bonuses, shift differentials,
24 and incentives.

25 32. Plaintiffs and the Class Members were also regularly required to work shifts
26 in excess of five hours without being provided a lawful meal period and. Moreover, Plaintiffs
27 and, on information and belief, the Class Members worked over ten hours in a day without
28 being provided a second lawful meal period as required by law.

1 33. Indeed, during the relevant time, as a consequence of Defendants' scheduling
2 practices, work demands, and Defendants' policies and practices, Defendants frequently
3 failed to provide Plaintiffs and the Class Members timely, legally complaint uninterrupted
4 30-minute meal periods as required by law on shifts over five hours. Not only were Plaintiffs'
5 and the Class Members' first meal breaks frequently not provided, untimely or short, but also
6 Plaintiffs and the Class Members were not provided a second meal period when working
7 shifts in excess of 10 hours and in excess of 12 hours.

8 34. Despite the above-mentioned meal period violations, Defendants failed to
9 compensate Plaintiffs, and on information and belief, failed to compensate Class Members,
10 one additional hour of pay at their regular rate as required by California law when meal
11 periods were not timely or lawfully provided in a compliant manner.

12 35. Plaintiffs are informed and believe, and thereon allege, that Defendants know,
13 should know, knew, and/or should have known that Plaintiffs and the other Class Members
14 were entitled to receive accurate premium wages under Labor Code §226.7 but were not
15 receiving accurately calculated compensation.

16 36. Defendants also failed to provide accurate, lawful itemized wage statements to
17 Plaintiffs and the Class Members in part because of the above specified violations.

18 37. Defendants have also made it difficult to determine applicable rates of pay and
19 account with precision for the unlawfully withheld wages and deductions due to be paid to
20 Non-exempt Employees, including Plaintiffs, during the liability period because they did not
21 implement and preserve a lawful record-keeping method to record all hours worked, and non-
22 provided rest and meal periods owed to employees as required for non-exempt employees by
23 29 U.S.C. section 211(c), California Labor Code section 226, and applicable California Wage
24 Orders.

25 38. Plaintiffs are informed and believe, and thereon allege, that at all times herein
26 mentioned, Defendants knew that at the time of termination of employment (or within 72
27 hours thereof for resignations without prior notice as the case may be) they had a duty to
28 accurately compensate Plaintiffs and Class Members for all wages owed including straight

1 time, overtime, meal and rest period premiums, and that Defendants had the financial ability
2 to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to
3 do so in part because of the above-specified violations.

4 39. Plaintiffs and the Class Members are covered by applicable California IWC
5 Wage Orders and corresponding applicable provisions of the California Code of Regulations,
6 Title 8, section 11000 *et seq.*

7 **Failure to Pay Minimum Wages**

8 40. Pursuant to Labor Code §§ 1194 and 1197 and Wage Order 7-2001, § 4,
9 payment to an employee of less than the applicable minimum wage for all hours worked in a
10 payroll period is unlawful.

11 41. Plaintiffs and the other members of the Class and Aggrieved Employees are
12 and were non-exempt employees entitled to the protections of Labor Code §§ 1194 and 1197
13 and Wage Order 7-2001, § 4. Defendants failed to pay Plaintiffs and the other members of
14 the Class and Aggrieved Employees minimum wages for all hours worked by, among other
15 things: requiring, suffering, or permitting them to work off-the-clock without compensating
16 them for such work; requiring, suffering, or permitting them to work through or during their
17 meal periods without compensating them for such work.

18 42. In violation of California law, Defendants failed to perform its obligations to
19 properly compensate Plaintiffs and the other members of the Class and Aggrieved Employees
20 for all hours worked. Defendants conduct violates Labor Code §§ 1194 and 1197 and Wage
21 Order 7-2001, § 4.

22 **Failure to Pay Overtime Wages**

23 43. Pursuant to Labor Code §§ 510 and 1194 and Wage Order 7-2001, § 3, an
24 employer must compensate its employees for all overtime, which is calculated at one and
25 one-half (1½) times the employees' regular rate of pay for hours worked in excess of eight
26 (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the
27 seventh consecutive work day, with double time for all hours worked in excess of eight (8)
28 hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

1 44. Plaintiffs and the other members of the Class and Aggrieved Employees are
2 and were non-exempt employees entitled to the protections of Labor Code §§ 510 and 1194
3 and Wage Order 7-2001. Defendants failed to compensate Plaintiffs and the other members
4 of the Class and Aggrieved Employees for all overtime hours worked as required under the
5 foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing
6 to pay them overtime at one and one-half (1½) times or double their regular rate of pay as
7 provided by Labor Code §§ 510 and 1194 and Wage Order 7-2001, § 3; requiring, suffering,
8 or permitting them to work off-the-clock without compensating them for such work;
9 requiring, suffering, or permitting them to work through or during meal periods without
10 compensating them for such work.

11 45. In violation of California law, Defendants have failed to perform its
12 obligations to properly compensate Plaintiffs and the other members of the Class and
13 Aggrieved Employees for all overtime hours worked, including at the correct overtime rate
14 taking into account non-discretionary incentive compensation and other required items.
15 Defendants' conduct violates Labor Code §§ 510 and 1194 and Wage Order 7-2001, § 3.

16 **Failure to Provide Meal Periods**

17 46. Pursuant to Labor Code §§ 226.7 and 512 and Wage Order 7-2001, § 11, an
18 employer is required to provide meal periods to its employees. An employer must provide a
19 meal period to any employee who works a shift of more than five (5) hours and a second
20 meal period to any employee who works a shift of more than ten (10) hours. Furthermore, an
21 employer must pay one extra hour of compensation for each workday a meal period is not
22 provided.

23 47. If an employee is not relieved of all duty during a meal period, the meal period
24 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty"
25 meal period is permitted only when 1) the nature of the work prevents an employee from
26 being relieved of all duty and 2) the parties have agreed in writing to on duty meal periods.

27 48. Plaintiffs and the other members of the Class and Aggrieved Employees are
28 and were non-exempt employees entitled to the protections of Labor Code §§ 226.7 and 512

1 and Wage Order 7-2001, § 11. Defendants failed to provide its employees timely, duty-free,
2 and uninterrupted 30-minute meal periods. In fact, Plaintiffs and the other members of the
3 Class and Aggrieved Employees' meal periods were short (less than thirty minutes), late (first
4 meal periods after the fifth hour of work and second meal periods after the tenth hour),
5 interrupted or unavailable due to workload, or missed. Defendants consistently failed to
6 provide Plaintiffs and the other members of the Class and Aggrieved Employees with lawful
7 meal periods because they were given too much work to perform to take fully compliant meal
8 periods.

9 49. Defendants further violated Labor Code § 226.7 and Wage Order 7-2001 by
10 failing to pay Plaintiffs and the other members of the Class and Aggrieved Employees who
11 were not provided with fully compliant meal periods one additional hour of pay at their
12 regular rate of compensation, including at the correct hourly rate taking into account non-
13 discretionary incentive compensation and other required items, for each workday a meal
14 period was not provided.

15 **Failure to Authorize and Permit Rest Periods**

16 50. Pursuant to Labor Code § 226.7 and Wage Order 7-2001, § 12, an employer is
17 required to authorize and permit rest periods to its employees. An employer must authorize
18 and permit a ten (10) minute rest period for every four (4) hours worked, or major fraction
19 thereof, which insofar as practicable shall be in the middle of each work period. Furthermore,
20 an employer must pay one extra hour of compensation at the employee's regular rate of
21 compensation for each workday a rest period is not authorized or permitted.

22 51. Plaintiffs and the other members of the Class and Aggrieved Employees are
23 and were non-exempt employees entitled to the protections of Labor Code § 226.7 and Wage
24 Order 7-2001. Defendants failed to authorize and permit its employees to take compliant rest
25 periods. Specifically, Defendants consistently failed to authorize and permit Plaintiffs and
26 the other members of the Class and Aggrieved Employees to take rest periods because they
27 were given too much work to perform to take fully compliant rest breaks.
28

1 52. Defendants further violated Labor Code § 226.7 and Wage Order 7-2001, § 12
2 by failing to pay Plaintiffs and the other members of the Class and Aggrieved Employees one
3 additional hour of pay at their regular rate of compensation, including at the correct hourly
4 rate taking into account non-discretionary bonuses and other required items, for each
5 workday a rest period was not authorized or permitted.

6 **Failure to Timely Pay All Wages Earned During Employment**

7 53. Pursuant to Labor Code § 204, an employer must pay its employees at least
8 twice a month for all wages earned during the preceding pay period. Labor Code § 204
9 provides that labor performed between the 1st and 15th days, inclusive, of any calendar
10 month shall be paid for between the 16th and the 26th day of the month during which the
11 labor was performed, and labor performed between the 16th and the last day, inclusive, of
12 any calendar month, shall be paid for between the 1st and 10th day of the following month.
13 An employer using an alternate payday schedule must pay wages within seven calendar days
14 of the end of the payroll period in which the wages were earned.

15 54. Defendants failed to pay Plaintiffs and the other members of the Class and
16 Aggrieved Employees for all hours worked and failed to pay them all overtime, meal, and
17 rest period premiums due, as described herein, Defendants violated Labor Code § 204 by
18 failing to pay such earned and accrued wages in accordance therewith.

19 **Failure to Pay All Wages Due Upon Separation From Employment**

20 55. Pursuant to Labor Code § 201, 202 and 203, an employer is required to pay all
21 earned and unpaid wages to an employee upon separation. Labor Code § 201 mandates that
22 if an employer discharges an employee, the employee's wages accrued and unpaid at the time
23 of discharge are due and payable immediately. Pursuant to Labor Code § 202, an employer
24 is required to pay all accrued wages due to an employee no later than 72 hours after the
25 employee quits his or her employment, unless the employee provided 72 hours previous
26 notice of his or her intention to quit, in which case the employee is entitled to his or her
27 wages at the time of quitting.

1 56. Labor Code § 203 provides that if an employer willfully fails to pay, in
2 accordance with Labor Code §§ 201 or 202, any wages of an employee who is discharged or
3 who quits, the employer is liable for waiting time penalties in the form of continued
4 compensation at the same rate until paid, up to thirty (30) days.

5 57. Defendants willfully failed to pay accrued wages and other compensation to
6 Plaintiffs and the other members of the Class and Aggrieved Employees in accordance with
7 Labor Code §§ 201-202.

8 58. Because Defendants failed to pay Plaintiffs and the other members of the Class
9 and Aggrieved Employees for all hours worked and failed to pay them all overtime, meal,
10 and rest period premiums due, as described herein, Defendants violated Labor Code §§ 201
11 and 202 by failing to pay such earned and accrued wages in accordance therewith and further
12 violated Labor Code § 203 by failing to pay them waiting time penalties in the form of
13 continued compensation at the same rate until paid, up to thirty (30) days.

14 **Knowing and Intentional Failure to Comply**
15 **with Itemized Wage Statement Provisions**

16 59. Labor Code § 226 requires every employer to furnish each of its employees an
17 accurate itemized wage statement in writing showing (1) the gross wages earned, (2) the total
18 hours worked, (3) the number of piece-rate units earned and any applicable piece rate if the
19 employee is paid on a piece-rate basis, (4) all deductions, (5) the net wages earned, (6) the
20 inclusive dates of the period for which the employee is paid, (7) the name of the employee
21 and only the last four digits of his or her social security number or an employee identification
22 number other than a social security number, (8) the name and address of the legal entity that
23 is the employer, and (9) all applicable hourly rates in effect during the pay period and the
24 corresponding number of hours worked at each hourly rate by the employee. Labor Code §
25 246 also requires that employers provide employees with written notice that sets forth the
26 amount of paid sick leave available, either on the employee's itemized wage statement
27 described in section 226 or in a separate writing.

1 60. Because Defendants failed to pay Plaintiffs and the other members of the Class
2 and Aggrieved Employees for all hours worked and failed to pay them all overtime, meal,
3 and rest period premiums due, as described herein, Defendants failed to provide Plaintiffs
4 and the other members of the Class and Aggrieved Employees with accurate itemized wage
5 statements showing their gross wages earned, total hours worked, accrued sick pay, all
6 deductions made or that should have been made, and net wages earned, in violation of Labor
7 Code § 226 and Wage Order 7-2001, § 7. Based on these omissions, Defendants also failed
8 to maintain required records in accordance with Labor Code §§ 226 and 1174 and Wage
9 Order 7-2001, § 7.

10 61. Defendants also violated Labor Code § 226 and Wage Order 7-2001, § 7 by
11 failing to provide Plaintiffs and the other members of the Class and Aggrieved Employees
12 with accurate itemized wage statements showing all applicable hourly rates in effect during
13 each pay period and the corresponding number of hours worked at each hourly rate, including
14 without limitation the hourly rate for the five hours or other amount of overtime Plaintiffs
15 and the other members of the Class and Aggrieved Employees were required to work each
16 week. Based on these omissions, Defendants also failed to maintain required records in
17 accordance with Labor Code §§ 226 and 1174 and Wage Order 7-2001, § 7.

18 **Failure to Maintain Required Records**

19 62. Labor Code §§ 225, 1174, and IWC Wage Order No. 7-2001 § 7 require
20 employers to maintain records for an employee's total daily hours worked, applicable rates
21 of pay, all deductions, all meal periods, time records, and accurate itemized statements.
22 Defendants knowingly and intentionally failed to maintain accurate records of Plaintiffs,
23 Class Members, and Aggrieved Employees.

24 **Failure to Indemnify Employees for Necessary**

25 **Expenditures Incurred in Discharge of Duties**

26 63. Labor Code § 2802(a) requires an employer to indemnify an employee for all
27 necessary expenditures or losses incurred by the employee in direct consequence of the
28 discharge of her his or her duties, or of his or her obedience to the directions of the employer.

1 In violation of California law, Defendants failed to indemnify Plaintiffs and the other
2 members of the Class and Aggrieved Employees for all business expenses and/or losses they
3 incurred in direct consequence of the discharge of their duties while working under the
4 direction of Defendants, including but not limited to expenses for cell phones, uniforms, and
5 other employment-related expenses.

6 **Violation of the Unfair Competition Law**

7 64. California Code of Civil Procedure § 1021.5 enforces important rights
8 affecting the public interest. Defendants' conduct is unfair, unlawful, and harmful to
9 Plaintiffs and the Class Members, Defendants' competitors, and the general public.

10 65. Defendants' policies, activities, and actions as alleged are also violations of
11 California Business and Professional Code §§ 17200 et seq. and thus Plaintiffs and Class
12 Members are entitled to restitution of the wages withheld by Defendants during the period
13 that commenced four (4) years prior to filing this complaint.

14 **Unfair and Unlawful Business Practices**

15 66. Defendants violated California Business and Professional Code §§ 17200 et
16 seq. by failing to provide required meal periods, meal periods, pay overtime compensation,
17 pay minimum wages, pay all wages due to discharged employees, failure to furnish itemized
18 wage statements, failure to maintain required records, and failing to indemnify Plaintiffs and
19 Class Members for necessary expenditures and/or losses incurring in discharging their duties.

20 67. Defendants' aforementioned acts and omissions were done repeatedly over a
21 period of time, and in a systematic manner, to the detriment of Plaintiffs and Class Members.
22 As a result of Defendants' unfair and unlawful business practices, Defendants gained unfair
23 and illegal profits during the class period at the expense of Plaintiffs, Class Members, and
24 members of the public.

25 **FIRST CAUSE OF ACTION**

26 **FAILURE TO PAY MINIMUM WAGES**

27 **(By Plaintiffs and the Class Against All Defendants)**

1 68. Plaintiffs incorporate each and every allegation set forth in all of the foregoing
2 paragraphs as if fully set forth herein.

3 69. Labor Code section 204 establishes the fundamental right of all employees in
4 the State of California to be paid wages, including minimum wage, straight time and
5 overtime, in a timely fashion for their work.

6 70. Labor Code section 1194(a) provides that notwithstanding any agreement to
7 work for a lesser wage, any employee receiving less than the legal minimum wage or the
8 legal overtime compensation applicable to the employee is entitled to recover in a civil action
9 the unpaid balance of the full amount of this minimum wage or overtime compensation,
10 including interest thereon, reasonable attorney's fees, and costs of suit.

11 71. Labor Code section 1197 provides: The minimum wage for employees fixed
12 by the commission or by any applicable state or local law, is the minimum wage to be paid
13 to employees, and the payment of a lower wage than the minimum so fixed is unlawful.

14 72. Pursuant to Labor Code section 1198, it is unlawful to employ persons for
15 longer than the hours set by the Industrial Welfare Commission or under conditions
16 prohibited by the IWC Wage Order(s).

17 73. The applicable Wage Orders and California Labor Code sections 1197 and
18 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in
19 amounts set by state law.

20 74. Labor Code sections 1194(a) and 1194.2(a) provide that an employee who has
21 not been paid the legal minimum wage as required by Labor Code section 1197 may recover
22 the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated
23 damages in an amount equal to the unpaid wages and interest accrued thereon.

24 75. During all relevant periods, the California Labor Code and Wage Orders
25 required that Defendants fully and timely pay its non-exempt, hourly employees all wages
26 earned and due for all hours worked.

76. The IWC Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

77. At all times relevant, Plaintiffs and Class Members consistently worked hours for which they were not paid because Defendants frequently required Plaintiffs and the Class Members to work off the clock.

78. Plaintiffs and Class Members were required to do pre- and/or post-shift activities while off the clock. Defendants did not compensate Plaintiffs and Class Members for this time spent off the clock.

79. In addition, Plaintiffs and the Class Members had their hours worked rounded against their interest.

80. Plaintiffs are informed and believe that Defendants were aware that Plaintiffs and the Class Members were working off the clock and that they should have been paid for this time.

81. Defendant's policy and practice of not paying all minimum wages violates California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the applicable Wage Orders 7-2001 and 9-2001.

82. Due to Defendants' violations of the California Labor Code and Wage Orders, Plaintiffs and the Minimum Wage Subclass members are entitled to recover from Defendant their unpaid wages, statutory penalties, reasonable attorneys' fees and costs in this action, and pre-judgment and post-judgment interest, as well as liquidated damages.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME OWED

(By Plaintiffs and the Overtime Subclass Against All Defendants)

83. Plaintiffs incorporate each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

84. During all relevant periods, Defendant required Plaintiffs and the Class members to work shifts in excess of eight (8) hours per workday and/or to work in excess of

1 forty (40) hours per workweek.

2 85. During all relevant periods, both the California Labor Code sections 1194,
3 1197, 510, 1198, and the pertinent Wage Orders 7-2001 and 9-2001 required that all work
4 performed by an employee in excess of eight (8) hours in any workday, on the seventh day
5 of work in any workweek, or in excess of forty (40) hours in any workweek be compensated
6 at one and one-half (1.5) times the employee's regular rate of pay. Any work in excess of
7 twelve (12) hours in one (1) day is required to be compensated at the rate of no less than
8 twice the regular rate of pay for an employee. In addition, any work in excess of eight (8)
9 hours on any seventh (7th) day of a workweek is required to be compensated at the rate of
10 no less than twice the regular rate of pay of an employee.

11 86. During all relevant periods, Defendants had a uniform policy of requiring
12 Plaintiffs and the Class members to work in excess of eight (8) hours in a workday and/or in
13 excess of forty (40) hours in a workweek without compensating them at a rate of one and
14 one-half (1.5) times their regular rate of pay. Upon information and belief, Defendants also
15 failed to properly compensate Plaintiffs and the Class Members for hours worked in excess
16 of twelve (12) hours in one (1) day, or eight (8) hours on the seventh (7th) day of a workweek.

17 87. The IWC Wage Orders define "hours worked" as "the time during which an
18 employee is subject to the control of an employer and includes all the time the employee is
19 suffered or permitted to work, whether or not required to do so."

20 88. At all times relevant, Plaintiffs and Class Members consistently worked hours
21 for which they were not paid because Plaintiffs and the Class Members were required to work
22 off the clock—some of these hours were over eight (8) hours in one (1) workday or in excess
23 of forty (40) hours in a workweek and should have been paid at the overtime rate.

24 89. Plaintiffs are informed and believe that Defendants were aware that Plaintiffs
25 and the Class Members were working off the clock and that they should have been paid for
26 this time.

27 90. In addition, upon information and belief, Defendants failed to incorporate all
28 forms of compensation, including without limitation shift differentials, bonuses, and

incentives, into the regular rate for overtime purposes.

91. In addition, as a matter of policy and practice, Defendants failed to pay earned overtime wages on shifts over eight hours.

92. Plaintiffs are informed and believe that Defendants did not have a valid alternative workweek schedule allowing such practices at the time such hours were worked.

93. As a result, Defendants failed to pay Plaintiffs and the Class members earned overtime wages and such employees suffered damages as a result.

94. Defendants knew or should have known Plaintiffs and the Class Members were undercompensated as a result of these practices.

95. Due to Defendant's violations of the California Labor Code, Plaintiffs and the Class members are entitled to recover from Defendants their unpaid overtime wages, reasonable attorneys' fees and costs in this action, and pre-judgment and post-judgment interest, statutory penalties, and liquidated damages.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE LAWFUL MEAL PERIODS

(By Plaintiffs and the Meal Period Subclasses Against All Defendants)

96. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

97. Pursuant to Labor Code § 512, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee.

98. For the four (4) years preceding the filing of this lawsuit Defendants failed to provide Plaintiffs and Class Members timely and uninterrupted first meal periods of not less than thirty (30) minutes within the first five hours of a shift.

99. As a consequence of Defendants' policies and practices, requirements, demands, coverage and staffing, Plaintiffs and the Class Members were often required to

forego such meal periods, take shortened meal periods, and/or commence their meal periods into and beyond the sixth hour of their shifts.

100. Upon information and belief, Plaintiffs and the Class Members were not paid one hour of pay at their regular rate for each day that a meal period was not lawfully provided.

101. Moreover, as a matter of policy and practice, Plaintiffs and, upon information and belief, the Class members were also not provided second meal periods on days when shifts exceeded ten hours (and twelve hours), nor were they provided premium wages in lieu of a second meal period.

102. As a proximate result of the aforementioned violations, Plaintiffs and the Class Members have been damaged in an amount according to proof at time of trial.

103. Pursuant to Labor Code § 226.7, Plaintiffs and Class Members are entitled to recover one (1) hour of premium pay for each day in which a meal period violation occurred. They are also entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

104. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code section 3287.

FOURTH CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS

(By Plaintiffs and the Rest Period Subclasses Against All Defendants)

105. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

106. Pursuant to the IWC Wage Orders applicable to Plaintiffs' and Class Members' employment by Defendants, "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized rest period time shall be based on the total hours worked daily at the rate of

1 ten (10) minutes net rest time per four (4) hours worked or major fraction thereof....
2 Authorized rest period time shall be counted as hours worked, for which there shall be no
3 deduction from wages.”

4 107. Labor Code §226.7(a) prohibits an employer from requiring any employee to
5 work during any rest period mandated by an applicable order of the IWC.

6 108. Defendants were required to authorize and permit employees such as Plaintiffs
7 and Class Members to take rest periods during shifts in excess of 3.5 hours, based upon the
8 total hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major
9 fraction thereof, with no deduction from wages.

10 109. Despite said requirements of the IWC wage orders applicable to Plaintiffs’ and
11 Class Member’s employment with Defendants, Defendants failed and refused to authorize
12 and permit Plaintiffs and Class Members to take lawful, net ten (10) minute rest periods for
13 every four (4) hours worked, or major fraction thereof. Such rest breaks, when provided,
14 were frequently untimely or less than net ten minutes because of the work requirements
15 imposed by Defendants.

16 110. Defendants did not pay Plaintiffs one additional hour of pay at his regular rate
17 of pay for each day that a rest period violation occurred. On information and belief, the other
18 members of the Class endured similar violations as a result of Defendants’ rest period policies
19 and practices and Defendant did not pay said Class Members premium pay as required by
20 law.

21 111. By their failure to authorize and permit Plaintiffs and the Class Members to
22 take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or
23 major fraction thereof worked, including failure to provide two (2) total rest periods on six
24 to ten hour shifts and three (3) total ten (10) minute rest periods on days on which Plaintiffs
25 and the other Class Members work(ed) work a third rest period for shifts in excess of ten (10)
26 hours, and by their failure to provide compensation for such unprovided rest periods as
27 alleged herein, Defendants willfully violated the provisions of Labor Code sections 226.7
28 and the applicable IWC Wage Order(s).

112. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 218.6, 226.7, the applicable IWC Wage Orders, and Civil Code 3287.

FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING EMPLOYMENT

(By Plaintiffs and the Class Against All Defendants)

113. Plaintiffs incorporate by reference and re-allege each and every allegation contained above, as though fully set forth herein.

114. Labor Code section 204 requires that all wages are due and payable twice in each calendar month.

115. The wages required by Labor Code §§ 226.7, 510, 1194 and other sections became due and payable to each employee in each month that he or she was not provided with a meal period or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled.

116. Defendants violated Labor Code § 204 by systematically refusing to pay wages due under the Labor Code.

117. Labor Code section 210 (a) provides that "In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follow:

118. For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

119. For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

120. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to represent have been deprived of wages in amounts to be determined at trial, and are entitled to recovery of such amounts, penalties, plus interest thereon, attorneys fees, and costs, pursuant to Labor Code § 210, 218.5, 218.6, 510, 1194

SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION

(By Plaintiffs and the Waiting Time Subclass Against All Defendants)

121. Plaintiffs incorporate by reference and reallege each and every allegation contained above, as though fully set forth herein.

122. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages due within seventy-two (72) hours of separation of employment.

123. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

124. Plaintiffs and Class Members are entitled to compensation for all forms of wages earned, including but not limited to minimum wages, overtime, sick, and premium meal and rest period compensation, but to date have not received such compensation, therefore entitling them to Labor Code § 203 penalties.

125. In addition, irrespective of any derivative violation, Defendants failed to timely pay Plaintiffs and, upon information and belief, other Class Members earned compensation at the time of termination despite their obligations under Labor Code 201 and 202.

126. More than thirty (30) days have passed since affected Waiting Time Subclass Members have left Defendants' employ, and on information and belief, they have not received payment pursuant to Labor Code § 203.

127. Plaintiffs and Waiting Time Subclass Members are thus entitled to 30 days' wages as a penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

SEVENTH CAUSE OF ACTION

1 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**
2 **EMPLOYEE WAGE STATEMENT PROVISIONS**

3 **(By Plaintiffs and the Wage Statement Subclass Against All Defendants)**

4 128. Plaintiffs repeat and incorporate herein by reference each and every allegation set
5 forth above, as though fully set forth herein.

6 129. Labor Code section 226(a) reads in pertinent part: “Every employer shall,
7 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
8 as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately
9 when wages are paid by personal check or cash, an accurate itemized statement in writing showing
10 (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net
11 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
12 of the employee and only the last four digits of his or her social security number or an employee
13 identification number other than a social security number, (8) the name and address of the legal
14 entity that is the employer, and (9) all applicable hourly rates in effect during each the pay period
15 and the corresponding number of hours worked at each hourly rate by the employee....”.

16 130. Further, the IWC Wage Orders require in pertinent part: Every employer shall keep
17 accurate information with respect to each employee including the following: (3) Time records
18 showing when the employee begins and ends each work period. Meal periods, split shift intervals,
19 and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period
20 and applicable rates of pay....”

21 131. Labor Code section 1174 of the California also requires Defendants to maintain
22 and preserve, in a centralized location, among other items, records showing the names and
23 addresses of all employees employed and payroll records showing the hours worked daily by, and
24 the wages paid to, its employees. On information and belief and based thereon, Defendants have
25 knowingly and intentionally failed to comply with Labor Code section 1174, including by
26 implementing the policies and procedures and committing the violations alleged in the preceding
27 causes of action and herein. Defendants’ failure to comply with Labor Code section 1174 is
28 unlawful pursuant to Labor Code section 1175.

1 132. Defendants have failed to record many of the items delineated in applicable
2 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section 1174,
3 including by virtue of the fact that each wage statement which failed to accurately compensate
4 Plaintiffs and Class Members for all hours worked and for missed and non-provided meal and rest
5 periods, or which failed to include compensation for all minimum wages earned or overtime hours
6 worked, was an inaccurate wage statement. In addition, the wage statements inaccurately stated
7 totals hours worked and hours worked at each hourly wage rate.

8 133. On information and belief, Defendants failed to implement and preserve a lawful
9 record-keeping method to record all non-provided meal and rest periods owed to employees or all
10 hours worked, as required for Non-Exempt Employees under California Labor Code section 226
11 and applicable California Wage Orders. In order to determine if they had been paid the correct
12 amount and rate for all hours worked, Plaintiffs and Class Members have been, would have been,
13 and are compelled to try to discover the required information missing from their wage statements
14 and to perform complex calculations in light of the inaccuracies and incompleteness of the wage
15 statements Defendants provided to them.

16 134. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
17 Wage Orders, Defendants did not and still do not furnish each of the members of the Wage
18 Statement Class with an accurate itemized statement in writing accurately reflecting all of the
19 required information. Here, Plaintiffs assert the Defendant omitted required information, failed
20 to accurately include all applicable hourly rates on the wage statements and the corresponding
21 number of hours worked at such rates or hours paid at such rates. In addition, Defendants have
22 failed to provide accurate itemized wage statements as a consequence of the above-specified
23 violations for failure to accurately pay all wages owed, accurately record all hours worked, and
24 failure to pay meal and rest period premiums as required by law.

25 135. Moreover, upon information and belief, as a pattern and practice, in violation of
26 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
27 accurate records pertaining to the total hours worked for Defendants by the members of the Wage
28 Statement Class, including but not limited to, beginning and ending of each work period, meal

1 period and split shift interval, the total daily hours worked, and the total hours worked per pay
2 period and applicable rates of pay.

3 136. Plaintiffs and the members of the Wage Statement Class have suffered injury as a
4 result of Defendants' failure to maintain accurate records for the members of the Wage Statement
5 Class in that the members of the Wage Statement Class were not timely provided written accurate
6 itemized statements showing all requisite information, such that the members of the Wage
7 Statement Class were misled by Defendants as to the correct information regarding various items,
8 including but not limited to total hours worked by the employee, net wages earned and all
9 applicable hourly rates in effect during the pay period and the corresponding number of hours
10 worked at each hourly rate.

11 137. Pursuant to Labor Code section 226, and in light of Defendants' violations
12 addressed above, Plaintiffs and the Wage Statement Class Members are each entitled to recover
13 up to a maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

14 **EIGHTH CAUSE OF ACTION**
15 **FAILURE TO MAINTAIN REQUIRED RECORDS**
16 **(By Plaintiffs and the Class Against All Defendants)**

17 138. Plaintiffs incorporates herein by specific reference, as though fully set forth,
18 the allegations in the foregoing paragraphs.

19 139. During the class period, as part of Defendants' illegal payroll policies and
20 practices to deprive Plaintiffs and Class Members of all wages earned and due, Defendants
21 knowingly and intentionally failed to maintain records as required under California Labor
22 Code §§ 226, 1174, and IWC Wage Order No. 7-2001, § 7, including but not limited to the
23 following records: total daily hours worked by each employee; applicable rates of pay; all
24 deductions; meal periods; time records showing when each employee begins and ends each
25 work period; and accurate itemized statements.

26 140. As a proximate result of Defendants' unlawful actions and omissions,
27 Plaintiffs and Class Members have been damaged in an amount according to proof at trial,
28 and are entitled to all wages earned and due, plus interest thereon. Additionally, Plaintiffs

1 and Class Members are entitled to all available statutory penalties, including but not limited
2 to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an
3 award of costs, expenses, and reasonable attorneys' fees, including but not limited to those
4 provided in California Labor Code § 226(e), as well as other available remedies.

5 **NINTH CAUSE OF ACTION**

6 **FAILURE TO INDEMNIFY EMPLOYEES FOR NECESSARY EXPENDITURES**

7 **INCURRED IN DISCHARGE OF DUTIES**

8 **(By Plaintiffs and the Class Against All Defendants)**

9 141. Plaintiffs incorporates by reference and re-allege each and every allegation
10 contained above, as though fully set forth herein.

11 142. California Labor Code § 2802(a) requires an employer to indemnify an
12 employee for all necessary expenditures or losses incurred by the employee in direct
13 consequence of the discharge of his or her duties, or of his or her obedience to the directions
14 of the employer.

15 143. During the Class Period, Defendants knowingly and willfully failed to
16 indemnify Plaintiffs and Class Members all business expenses and/or losses incurred in direct
17 consequence of the discharge of their duties while working under the direction of Defendants,
18 including but not limited to expenses for uniforms, cell phone usage, tools, and other
19 employment-related expenses, in violation of California Labor Code § 2802.

20 144. As a proximate result of Defendants' unlawful actions and omissions,
21 Plaintiffs and Class Members have been damaged in an amount according to proof at trial,
22 and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to
23 California Labor Code § 2802(b). Additionally, Plaintiffs and Class Members are entitled to
24 all available statutory penalties and an award of costs, expenses, and reasonable attorneys'
25 fees, including those provided in California Labor Code § 2802(c), as well as other available
26 remedies.

27 **TENTH CAUSE OF ACTION**

28 **VIOLATION OF THE UNFAIR COMPETITION LAW**

(By Plaintiffs and the Class Against All Defendants)

145. Plaintiffs incorporate by reference and re-allege each and every allegation contained above, as though fully set forth herein.

146. Defendants' conduct, as alleged in this complaint, has been, and continues to be, unfair, unlawful, and harmful to Plaintiffs and Class Members, Defendants' competitors, and the general public. Plaintiffs also seeks to enforce important rights affecting the public interest within the meaning of the California Code of Civil Procedure § 1021.5.

147. Defendants' policies, activities, and actions as alleged herein are violations of California law and constitute unlawful business acts and practices in violation of California Business and Professions Code §§ 17200, *et seq.*

148. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on the violation of any state or federal law.

149. The state law violations, including violations of the relevant IWC Wage Orders, detailed herein above are the predicate violations for this cause of action. By way of example only, in the instant case Defendants' policy of failing to lawfully provide Plaintiffs and the Class with timely meal and rest periods or pay one (1) hour of premium pay when a meal or rest period was not lawfully provided violates Labor Code § 512, and § 226.7, and the IWC Wage Orders. Defendants further violated the law through their policies of failing to fully and accurately compensate Plaintiffs and the Class Members for all hours worked, including minimum wages and overtime, as well as failing to provide accurate itemized wage statement as specified above.

150. Plaintiffs and the Class Members have been personally aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

151. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiffs and the Class Members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four (4) years prior to the filing of this

1 complaint; an award of attorneys' fees pursuant to California Code of Civil Procedure
2 §1021.5; interest; and an award of costs.

3 **ELEVENTH CAUSE OF ACTION**
4 **FOR UNFAIR AND UNLAWFUL BUSINESS PRACTICES**

5 **(By Plaintiffs and the Class Against All Defendants)**

6 152. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
7 and every allegation set forth above.

8 153. Each and every one of Defendants' acts and omissions in violation of the
9 California Labor Code and/or the applicable IWC Wage Order as alleged herein, including
10 but not limited to Defendants' failure and refusal to provide required meal periods,
11 Defendants' failure and refusal to provide required rest periods, Defendants' failure and
12 refusal to pay overtime compensation, Defendants' failure and refusal to pay minimum
13 wages, Defendants' failure and refusal to pay all wages due to discharged or quitting
14 employees, Defendants' failure and refusal to furnish accurate itemized wage statements;
15 Defendants' failure and refusal to maintain required records, Defendants' failure and refusal
16 to indemnify Plaintiffs and Class Members for necessary expenditures and/or losses incurring
17 in discharging their duties, constitutes an unfair and unlawful business practice under
18 California Business and Professions Code § 17200 et seq.

19 154. Defendants' violations of California wage and hour laws constitute a business
20 practice because Defendants' aforementioned acts and omissions were done repeatedly over
21 a significant period of time, and in a systematic manner, to the detriment of Plaintiffs and
22 Class Members.

23 155. Defendants have avoided payment of wages, overtime wages, meal periods,
24 rest periods, and other benefits as required by the California Labor Code, the California Code
25 of Regulations, and the applicable IWC Wage Order. Further, Defendants have failed to
26 record, report, and pay the correct sums of assessment to the state authorities under the
27 California Labor Code and other applicable regulations.

1 156. As a result of Defendants’ unfair and unlawful business practices, Defendants
2 have reaped unfair and illegal profits during the Class Period at the expense of Plaintiffs,
3 Class Members, and members of the public. Defendants should be made to disgorge their
4 ill-gotten gains and to restore them to Plaintiffs and Class Members.

5 157. Defendants’ unfair and unlawful business practices entitle Plaintiffs and Class
6 Members to seek preliminary and permanent injunctive relief, including but not limited to
7 orders that Defendants account for, disgorge, and restore to Plaintiffs and Class Members the
8 wages and other compensation unlawfully withheld from them. Plaintiffs and Class Members
9 are entitled to restitution of all monies to be disgorged from Defendants in an amount
10 according to proof at the time of trial, but in excess of the jurisdiction of this Court.

11 **TWELFTH CAUSE OF ACTION**
12 **FOR PENALTIES PURSUANT TO**
13 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT (“PAGA”)**
14 **(By Plaintiffs Skutley and Miller, as Private Attorneys General, Against All**
15 **Defendants)**

16 158. Plaintiffs incorporates by reference each and every paragraph above, and re-
17 alleges each and every allegation contained above as though fully set forth herein.

18 159. Plaintiffs gave timely written notice by online submission to the LWDA and
19 by certified mail to Defendants of Defendants’ violations of numerous provisions of the
20 California Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were
21 paid as required by statute.

22 160. Plaintiffs are “aggrieved employees” as defined in Labor Code Section
23 2699(A), as she was employed by Defendants during the statutory period and suffered one
24 or more of the Labor Code violations set forth herein. She seeks to recover of herself and all
25 other current and former aggrieved employees of Defendants the civil penalties provided by
26 PAGA, plus reasonable attorneys’ fees and costs.

1 161. Sixty-five (65) days have passed, and no response has been received from the
2 LWDA. Accordingly, the LWDA has permitted Plaintiffs to proceed in a representative
3 capacity.

4 162. Plaintiffs have exhausted all administrative procedures required of them under
5 the Labor Code §§2698, 2699, 2699.3, and as a result, is justified as a matter of right in
6 bringing forward this cause of action.

7 163. Pursuant to Labor Code section 2699(a) Plaintiffs seek to recover civil
8 penalties for which Defendants are liable due to numerous Labor Code violations as set forth
9 in this Complaint.

10 164. Plaintiffs seek to recover the PAGA civil penalties through a representative
11 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*
12 (2009) 46 Cal. 4th 969. Class certification of the PAGA claims is not required.

13 165. Pursuant to Labor Code section 2698 et seq. and 2699(a), Plaintiffs seek to
14 recover civil penalties for which Defendants are liable due to numerous Labor Code and
15 Wage Order violations as set forth in this Complaint.

16 166. Specifically, Plaintiffs, on behalf of herself and the Aggrieved Employees,
17 seek penalties under Labor Code §2699, for, without limitation, the claims set forth herein,
18 including:

- 19 a. Defendants' failure to comply with the requirement of Labor Code
20 §1182.12, 1194, 1197, 1198, and Wage Orders to pay at least minimum
21 wage for every hour worked;
- 22 b. Defendants' failure to comply with the requirement of Labor Code §510,
23 1194, 1197, 1198, and Wage Orders to accurately pay all wages earned,
24 including overtime;
- 25 c. Defendants' failure to comply with the requirement of Labor Code §216 to
26 pay wages after demand was made;
- 27 d. Defendants' failure to comply with the requirement of Labor Code §§204
28 and 210 to pay, without condition and within the time set by the applicable

- 1 article, all wages, or parts thereof;
- 2 e. Defendants' failure to comply with the requirement of Labor Code §225.5
- 3 to pay wages due;
- 4 f. Defendants' failure to comply with the requirement of Labor Code §§201
- 5 and 202 to pay wages due to former employees;
- 6 g. Defendants' failure to comply with the requirement of Labor Code §226.7,
- 7 512, 1198, and IWC Wage Orders to provide timely, uninterrupted 30
- 8 minute off-duty meal periods;
- 9 h. Defendants' failure to comply with the requirement of Labor Code §226.7,
- 10 1198, and IWC Wage Orders to pay one hour of premium pay at the regular
- 11 rate for each lawful meal break that was not provided;
- 12 i. Defendants' failure to comply with the requirement of Labor Code §226.7,
- 13 1198, and IWC Wage Orders to authorize and permit ten (10) minute rest
- 14 breaks;
- 15 j. Defendants' failure to comply with the requirement of Labor Code
- 16 §§226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at
- 17 the regular rate for each statutorily required rest break that was not lawfully
- 18 authorized and permitted;
- 19 k. Defendants' failure to provide accurate compliant wage statements under
- 20 Labor Code section 226;
- 21 l. Defendants' failure to maintain required records in violation of Labor Code
- 22 §226, 1174, and Wage Orders;
- 23 m. Defendants' failure to properly pay sick leave in violation of Labor Code
- 24 §246;
- 25 n. Defendants' failure to pay Covid-19 supplemental paid sick leave for
- 26 Covid-related absences in violation of Labor Code sections 248.6, 248.7,
- 27 and AB 152;
- 28 o. Defendants' practice of unlawfully conducting background/credit checks

1 of Aggrieved Employees in violation of Labor Code section 1024.5;

- 2 p. Defendants' failure to comply with the requirement of Labor Code §2802,
3 and Wage Orders to indemnify an employee for all necessary expenditures
4 or losses incurred by the employee in direct consequence of the discharge
5 of his or her duties, or of his or her obedience to the directions of the
6 employer.

7 167. Plaintiffs seek civil penalties for Defendants' violation of Labor Code
8 provisions for which a civil penalty is specifically provided, including but not limited to the
9 following:

- 10 a. Pursuant to Labor Code §210, for violations of Labor Code §204,
11 Defendants are subject to a civil penalty in the amount of one hundred
12 dollars (\$100) for the initial violation for each failure to pay each employee
13 and two hundred (\$200) per employee for violations in subsequent pay
14 periods plus 25% of the amount unlawfully withheld.
- 15 b. Pursuant to Labor Code §226.3, for violations of Labor Code §226 (a)
16 Defendants are subject to a civil penalty in the amount of two hundred and
17 fifty dollars (\$250) per aggrieved employee for the initial pay period where
18 a violation occurs and one thousand dollars (\$1,000) per aggrieved
19 employee for violations in subsequent pay period.
- 20 c. Pursuant to Labor Code §558(a), "[a]ny employer or other person acting
21 on behalf of an employer who violated, or causes to be violated, a section
22 of this chapter or any provisions regulating hours and days of work in any
23 order of the Industrial Welfare Commission," including Labor Code §§510
24 and 512, shall be subject to a civil penalty, in addition to any other penalty
25 provided by law, of fifty dollars (\$50) for initial violations for each
26 underpaid employee for each pay period for which the employee was
27 underpaid and one hundred dollars (\$100) for each subsequent violation
28 for each underpaid employee for each pay period for which the employee

1 was underpaid.

2 d. Pursuant to Labor Code §1174.5, for violations of Labor Code §1174(d),
3 Defendants are subject to a civil penalty of five hundred dollars (\$500).

4 e. Pursuant to Labor Code §1197.1, an employer who pays or causes to be
5 paid to any employee a wage less than the minimum fixed by an order of
6 the commission, shall be subject to a civil penalty as follows: for any initial
7 violation that is intentionally committed, one hundred dollars (\$100) for
8 each underpaid employee for each pay period for which the employee is
9 underpaid; and for each subsequent violation of the same offense, two
10 hundred fifty dollars (\$250) for each underpaid employee for each pay
11 period for which the employee is underpaid regardless of whether the initial
12 violation was intentionally committed.

13 168. Further, as a result of the acts alleged hereinabove, Plaintiffs seek penalties
14 under Labor Code §§2698 et seq. and 2699 because of Defendants' violation of numerous
15 provisions of the California Labor Code and IWC Wage Orders.

16 169. Under Labor Code §2699, Plaintiffs and Aggrieved Employees are entitled to
17 \$100 for any initial violation and \$200 for all subsequent violations of the above-mentioned
18 provisions of the California Labor Code.

19 170. Under Labor Code §2699, Plaintiffs and Aggrieved Employees should be
20 awarded twenty-five percent (25%) of all penalties due under California Law, interest,
21 attorneys' fees and costs.

22 171. Under Labor Code §2699, the State of California should we awarded seventy-
23 five percent (75%) of the penalties due under California Law.

24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Plaintiffs pray for judgment against Defendants, jointly and
26 severally, as follows:

- 27 1. For compensatory damages in an amount to be ascertained at trial;
28 2. For restitution of all monies due to Plaintiff and Class Members, as well as

1 disgorged profits from Defendants' unfair and unlawful business practices;

2 3. For meal and rest period compensation pursuant to California Labor Code § 226.7
3 and IWC Wage Order No. 7-2001;

4 4. For liquidated damages pursuant to California Labor Code §§ 1194.2 and 1197.1;

5 5. For preliminary and permanent injunctive relief enjoining Defendants from
6 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and
7 from engaging in the unlawful business practices complained of herein;

8 6. For waiting time penalties pursuant to California Labor Code § 203;

9 7. For statutory and civil penalties according to proof, including but not limited to all
10 penalties authorized by the California Labor Code §§ 226(e) and §§ 2698–2699.5;

11 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor
12 Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable
13 provision providing for pre-judgment interest;

14 9. For reasonable attorneys' fees and costs pursuant to California Labor Code
15 §§ 218.5, 1194, 2699, 2802, California Civil Code § 1021.5, and any other applicable provisions
16 providing for attorneys' fees and costs;

17 10. For declaratory relief;

18 11. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth,
19 Seventh, Eighth, and Ninth Causes of Action as a class action;

20 12. For an order appointing Plaintiffs as class representatives, and Plaintiffs' counsel
21 as class counsel; and

22 13. For such further relief that the Court may deem just and proper.

23 **DEMAND FOR JURY TRIAL**

24 Plaintiffs, on behalf of the Class and Subclasses, respectfully demand a jury trial in
25 this matter to the fullest extent available under the law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: October 4, 2024

JAMES HAWKINS APLC

By: 

JAMES R. HAWKINS
CHRISTINA M. LUCIO
MITCHELL J. MURRAY
Attorneys for Plaintiff Brandy Skutley

Dated: October 4, 2024

MATERN LAW GROUP, PC

By: /s/ Mikael H. Stahle (with permission)

MATTHEW J. MATERN
MIKAEL H. STAHLE
Attorneys for Plaintiff Timothy Miller

PROOF OF SERVICE

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On October 4, 2024, I served on the interested parties in this action the following document(s) entitled:

- FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address citlalli@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SERVICE LIST

BRYAN CAVE LEIGHTON PAISNER LLP
Allison C. Eckstrom, California Bar No. 217255
Christopher J. Archibald, California Bar No. 253075
Gabriel C. Hemphill, California Bar No. 338222
1920 Main Street, Suite 1000
Irvine, California 92614-7276
Telephone: (949) 223-7000
Facsimile: (949) 223-7100
E-Mail: allison.eckstrom@bclplaw.com
christopher.archibald@bclplaw.com
gabriel.hemphill@bclplaw.com

Attorneys for Defendant
WALGREEN CO

[X] STATE: I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on October 4, 2024, at Irvine, California.


Citlalli Gutierrez