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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF RIVERSIDE

JUL 16 2020

L. VILLANUEVA

10 Attorneys for Plaintiffs Cheryl Foster and Travonn Haley,
 11 on behalf of themselves and all others similarly situated

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

CHERYL FOSTER, an individual; TRAVONN
 HALEY, an individual, on behalf of themselves
 and others similarly situated,

Plaintiff,

vs.

EMPLOYBRIDGE, LLC, a limited liability
 company; DECKERS BRAND, a business
 entity of unknown origin, and DOES 1 through
 50, inclusive,

Defendants.

Case No.: RIC2002197

CLASS ACTION

Assigned for All Purposes To:
 Hon. Sunshine Sykes
 Dept.: 06

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code §§ 226.7, 512;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a);
6. Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5;
7. Violation of Labor Code § 221;
8. Violation of Labor Code § 203;
9. Violation of Business & Professions Code § 17200 *et seq.*; and
10. Penalties Pursuant to Labor Code § 2699, *et seq.*

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiffs Cheryl Foster and Travonn Haley (hereinafter collectively “Plaintiffs”), on behalf
2 of themselves and all others similarly situated (collectively, “Employees” or “Class Members”;
3 individually, “Employee”) complains of Defendants, and each of them, as follows:

4 **INTRODUCTION**

5 1. Plaintiffs bring this action on behalf of themselves and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants
8 EMPLOYBRIDGE, LLC, a limited liability company; DECKERS BRAND, a business entity of
9 unknown origin, and DOES 1 through 50 (all defendants being collectively referred to herein as
10 “Defendants”). Plaintiffs allege that Defendants, and each of them, violated various provisions of
11 the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and
12 California Business & Professions Code, and seeks redress for these violations.

13 2. Upon information and belief, the same violations Plaintiffs endured at Defendants’
14 Riverside, California location was also experienced by all non-exempt hourly employees working
15 for Defendants throughout California. Plaintiffs were employed by Defendants and (1) shared
16 similar job duties and responsibilities, (2) was subjected to the same policies and practices, and (3)
17 endured similar violations at the hands of Defendants as the other Class Members who served in
18 similar and related positions throughout California.

19 **THE PARTIES**

20 **A. The Plaintiff**

21 3. Plaintiff, Cheryl Foster is a resident of Riverside County in California and, during
22 the time period relevant to this Complaint, was employed by Defendants as a non-exempt, hourly
23 employee, based out of Defendants’ facility in Riverside, California.

24 4. Plaintiff, Travonn Haley is a resident of Riverside County in California and, during
25 the time period relevant to this Complaint, was employed by Defendants as a non-exempt, hourly
26 employee, based out of Defendants’ facility in Riverside, California.

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1 **B. The Defendants**

2 5. Defendant, EMPLOYBRIDGE, LLC (“EMPLOYBRIDGE”), is a California
3 limited liability company and lists its principal offices in Santa Barbara County, California.
4 During the relevant time period that is the subject of this complaint, EMPLOYBRIDGE has been
5 listed as the employer on the wage statements and other employment related documentation issued
6 to Plaintiffs under the entity name of “EMPLOYBRIDGE LLC AS AGENT FOR REAL TIME
7 STAFFING SERVICES”, and upon information and belief, the other Class Members. Upon
8 information and belief EMPLOYBRIDGE was the third-party employer of Plaintiffs and Class
9 Members.

10 6. Defendant, DECKERS BRAND (“DECKERS”), a business entity of unknown
11 origin, is belief to have its principal offices located in Santa Barbara County, California. During
12 the relevant time period that is the subject of this complaint, DECKERS has been the onsite
13 employer of Plaintiff, and upon information and belief Class Members. Plaintiffs worked out of
14 DECKERS Riverside County warehouse.

15 7. The true names and capacities, whether individual, corporate, associate, or
16 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
17 unknown to Plaintiffs, who therefore sues these Defendants by such fictitious names under Code
18 of Civil Procedure § 474. Plaintiffs are informed and believes, and thereon alleges, that
19 Defendants designated herein as Does 1 through 50, inclusive, and each of them, are legally
20 responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of
21 court to amend this Complaint to reflect the true names and capacities of the Defendants
22 designated herein as Does 1 through 50 when their identities become known.

23 8. Plaintiffs are informed and believe, and thereon alleges, that each Defendant acted
24 in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
25 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
26 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
27 all respects as the employers or joint employers of Employees. Defendants, and each of them,
28 exercised control over the wages, hours or working conditions of Employees, issued policies

1 governing their employment, or suffered or permitted Employees to work, or engaged, thereby
2 creating a common law employment relationship, with Employees. Therefore, Defendants, and
3 each of them, employed or jointly employed Employees.

4 9. Moreover, upon information and belief, Defendant DECKERS was client
5 employers within the definition of Labor Code § 2810.3, and EMPLOYBRIDGE, as the labor
6 contractor, must share all civil legal responsibility and civil liability for all workers it supplied for
7 the payment of wages, including the premium penalty wages owed for Defendants' failure to
8 authorize and permit rest periods. Additionally, under California Labor Code § 2810.3,
9 DECKERS and EMPLOYBRIDGE share in civil legal responsibility for all workers supplied by
10 EMPLOYBRIDGE to DECKERS for their collective failure to pay all earned wages. California
11 Labor Code § 2810.3, effective January 1, 2015, states that "A client employer shall share with a
12 labor contractor all civil legal responsibility and civil liability for all workers supplied by that
13 labor contractor for...the payment of wages." A "labor contractor" (i.e. EMPLOYBRIDGE) is
14 defined as "an individual or entity that supplies, either with or without a contract, a client
15 employer with workers to perform labor within the client employer's usual course of business."
16 "Client employer" (i.e. DECKERS) is defined as "a business entity, regardless of its form, that
17 obtains or is provided workers to perform labor within its usual course of business from a labor
18 contractor." Upon information and belief, Defendant DECKERS is and has been a client employer
19 within the definition of Labor Code § 2810.3 and shares with EMPLOYBRIDGE, the labor
20 contractor, all civil legal responsibility and civil liability for the payment of all wages earned by
21 Plaintiff and the Class members. DECKERS and EMPLOYBRIDGE are joint employers of
22 Plaintiff and the Class members for the reasons set forth above.

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

26 11. Whenever and wherever reference is made to individuals who are not named as a
27 Defendant in this Complaint but were agents, servants, employees and/or supervisors of
28 Defendants, such individuals at all relevant times acted on behalf of Defendants within the scope

1 of their employment.

2 **JURISDICTION AND VENUE**

3 12. This Court has jurisdiction over this Action pursuant to California Code of Civil
4 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
5 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
6 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
7 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
8 obligations and liabilities giving rise to this lawsuit occurred at least in part in Riverside County.
9 Defendants maintain and operate company facilities in Riverside and employs Plaintiffs and other
10 Class Members throughout California.

11 **FACTUAL BACKGROUND**

12 13. The Employees who comprise the Class, including Plaintiff, are non-exempt
13 employees pursuant to the applicable Wage Order(s) of the IWC. Defendants hire hourly
14 employees who work in non-exempt positions at the direction of Defendants in the State of
15 California. Plaintiffs and Class Members were either not paid by Defendants for all hours worked
16 or were not paid at the appropriate minimum, regular and overtime rates. Plaintiffs also contends
17 that Defendants failed to pay Plaintiffs and Class Members all wages due and owing to their
18 detriment.

19 14. As discussed in detail below, Defendants' employment practices resulted in: (i)
20 Class Members performing pre-shift and post-shift off-the-clock work, (ii) failure to provide
21 timely, uninterrupted meal and rest breaks, (iii) failure to pay minimum wages for all hours
22 worked, and (iv) failure to furnish accurate wage statements. Defendants conduct thus violated
23 various provisions of the California Labor Code and applicable Wage Orders.

24 15. Defendants failed to pay Plaintiffs and Class Members for pre-shift and post-shift
25 hours worked for which Class Members remained under Defendants control. Plaintiffs were
26 scheduled to work, on average, twenty-one (21) days in a row, from 4:00 a.m. to 4:00 p.m. each
27 day, before getting a day off in violation of Labor Code § 551. Yet due to the security checkpoints
28 and screening procedures Defendants instituted, Plaintiffs, and upon information and belief Class

1 Members, would be forced to engage in approximately twenty (20) to thirty-five (35) minutes of
2 off the clock pre-shift and post shift work per day while subject to Defendants control and
3 authority. Furthermore, Defendants instituted a point system in which an employee would
4 accumulate a single point if they were even one (1) minute late to clock in. This point system,
5 combined with the below discussed pre-shift off the clock hours for which Class Members were
6 subject to Defendants control, created a system in which Plaintiffs and Class Members would be
7 compelled to arrive to Defendants facilities up at least thirty (30) minute early each day.

8 16. Defendants policies and practices required Plaintiffs and Class Members to subject
9 themselves to numerous and lengthy employee lines and security screenings before being able to
10 clock in for the day using Defendants time keeping machine, all time for which was off the clock
11 and uncompensated for. More specifically, in order to enter Defendants facilities, Plaintiffs and
12 Class Members first had to go through a badge swipe procedure in order to gain access to the
13 building. As there were up to seventy (70) to eighty (80) employees in line for the badge swipe at
14 any given time, this process took anywhere from five (5) to ten (10) minutes, a length of time that
15 was further complicated if an employee was having badge problems.

16 17. Secondly, once Plaintiffs and Class Members got through the badge swipe line
17 which granted access to Defendants facilities, next they had to wait in another line to go through a
18 security bag check station. As there were again up to seventy (70) to eighty (80) employees in line
19 for the security bag check at any given time, this process took anywhere from ten (10) to fifteen
20 (15) minutes if not longer to get through. Again, all of this was unrecorded and off the clock.

21 18. Third, after Plaintiffs and Class Members got through both the badge swipe process
22 and the security bag check, they then had to wait in line to use Defendants time clock machines in
23 order to punch in and out the day. Once again, as there were up to seventy (70) to eighty (80)
24 employees in line for the time keeping machines at any given time, this process took anywhere
25 from five (5) to ten (10) minutes. All of the time, along with the badge swipe and security bag
26 check procedures, were all off the clock and uncompensated for despite Plaintiffs and Class
27 Members being subject to Defendants control and authority, to their detriment.

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1 19. Plaintiffs and Class Members were also subject to post-shift hours for which were
2 unrecorded, to their detriment. More specifically, as described above in relationship to the pre-
3 shift hours for which Class Members were subject to Defendants control, the reverse was true
4 when their shift ended for day. Plaintiffs and Class Members would first clock out, next be subject
5 to a security bag check, and finally have to swipe their badge as they left Defendants facilities. As
6 a large number of employees were all on the same shift schedule, at any given time there were
7 updates of seventy (70) to eighty (80) employees waiting in line to go through the same process.
8 Thus Plaintiffs and Class Members were also subject to twenty (20) to thirty-five (35) minutes of
9 uncompensated post-shift hours for which they were subject to Defendants control and authority,
10 to their detriment.

11 20. This was an intentional and calculated practice of Defendants to avoid paying Class
12 Members all duly owed wages. Thus, Class Members worked longer hours than recorded by
13 Defendants. This off-the-clock work also resulted in overtime hours accruing earlier than when
14 Defendants started paying them in a work shift. Defendants therefore unlawfully deducted wages
15 earned by and owed to the Class Members, in violation of Labor Code § 221. Defendants'
16 common policy and/or practice of understating the hours worked by Class Members has given rise
17 to further ongoing violations of Labor Code § 221.

18 21. To the extent that Defendants paid overtime to Plaintiffs and Class Members, it
19 began doing so well after eight (8) hours into a work shift day and/or forty (40) hours a week, as
20 Defendants' corresponding time records and paystubs show. Therefore, from at least four (4) years
21 prior to the filing of this lawsuit and continuing to the present, Defendants had a consistent policy
22 or practice of failing to pay Employees for all hours worked, and failing to pay minimum wages,
23 overtime wages, and double time wages for all time worked as required by California Law and in
24 violation of the Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and
25 4(A)-4(C) of the applicable IWC Wage Orders. Defendants' willful actions resulted in the
26 systematic underpayment of wages to Class Members, including underpayment of overtime and
27 double time pay to Class Members over a period of time.

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1 22. As a result of Defendants' unlawful policies and practices, Plaintiffs and Class
2 Members incurred overtime hours worked for which they were not adequately and completely
3 compensated for, in addition to the hours they were required to work off-the-clock. To the extent
4 applicable, Defendants also failed to pay Plaintiffs and Class Members at an overtime rate of 1.5
5 times the regular rate for the first eight hours of the seventh consecutive work day in a week and
6 overtime payments at the rate of two (2) times the regular rate for hours worked over eight (8) on
7 the seventh consecutive work day, as required under the Labor Code and applicable IWC Wage
8 Orders.

9 23. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
10 meal periods and all the legally required paid, off-duty rest periods to the Plaintiffs and the other
11 Class Members, including as required by Labor Code §§ 226.7 and 512, and paragraphs 11 and 12
12 of the applicable IWC Wage Orders.

13 24. Defendants did not have a policy or practice which provided or recorded all the
14 legally required unpaid, off-duty meal periods. Plaintiffs and Class Members were required to
15 perform work as ordered by Defendants for more than five (5) hours during a shift, but were often
16 required to do so without receiving a lawful and timely meal break, and were sometimes required
17 to take shortened meal breaks in order to keep up with the demands and pressures from
18 Defendants. This is because Defendants placed the current job needs over Plaintiffs and Class
19 Members' lawful meal breaks, forcing Class Members to take on duty meal periods in order to
20 keep up with the demands of the job.

21 25. Defendants' policy of requiring employees to engage in pre-shift off the clock work
22 also resulted in under-reporting hours worked in a manner that would impact when Class
23 Members were to receive meal periods, resulting in meal periods that were either provided late,
24 were impermissibly shortened, or were interrupted by work demands. This often resulted in meal
25 breaks being taken generally later than five (5) hours into the shift.

26 26. Therefore, from at least four (4) years prior to the filing of this lawsuit and
27 continuing to the present, meal period violations thus occurred in one or more of the following
28 manners:

- a. Class Members were not provided full thirty-minute duty free meal periods for work days in excess of five (5) hours and were not compensated one (1) hour's wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage Order(s);
- b. Class Members were not provided second full thirty-minute duty free meal 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. Class Members were not provided with "premium pay," i.e. one hour of wages at each Employee's effective hourly rate of pay, for each meal period that Defendants failed to provide or deficiently provided.
- e. Meal periods were provided after five hours of continuous work during a shift;
- f. Class Members were restricted in their ability to take a full duty free thirty-minute meal period; and
- g. Class Members were unable to leave Defendants premises during their meal periods due to the length of time it would take to go through punching out/in, security bag check, and the badge swipe.

27. Plaintiffs and Class Members were regularly required by Defendants to work through or during their rest breaks and were not provided with one hour's wages in lieu thereof, as discussed more fully above.

28. 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, due to the busy work environment, were restricted in their ability to take timely off-duty rest breaks which in turn were often provided at the end of a shift instead of every four (4) hours worked, or major fraction

thereof; and

- c. Class Members were unable to leave Defendants premises during their rest breaks due to the length of time it would take to go through punching out/in, security bag check, and the badge swipe.

29. From at least four (4) years prior to filing this lawsuit and continuing to the present, Defendants have also had a consistent policy of failing to pay all wages owed to Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.

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

31. In light of the foregoing, Plaintiffs bring this action on behalf of themselves and on behalf of all similarly situated Employees, pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218.6, 221, 226, 226.7, 510, 512, 551, 558, 1174, 1185, 1194, 1194.2, 1197, 2699, and California Code of Regulations, Title 8, section 11000 *et seq.*

32. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiffs and their fellow Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or fraudulent practices alleged in this Complaint.

CLASS ALLEGATIONS

33. Plaintiffs brings this class action on behalf of themselves and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiffs seeks to represent a Class (or “the Class” or “Class Members”) defined as follows: “All individuals employed by Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as determined by the Court (“the Class Period”), and who have been employed by Defendants as non-exempt, hourly employees within the State of California.”

34. Further, Plaintiffs seeks to represent the following Subclasses composed of and defined as follows:

- 1 a. Subclass 1. Minimum Wages Subclass. All Class Members who were not
2 compensated for all hours worked for Defendants at the applicable minimum
3 wage.
- 4 b. Subclass 2. Wages and Overtime Subclass. All Class Members who were not
5 compensated for all hours worked for Defendants at the required rates of pay,
6 including for all hours worked in excess of eight in a day and/or forty in a
7 week.
- 8 c. Subclass 3. Meal Period Subclass. All Class Members who were subject to
9 Defendants' policy and/or practice of failing to provide unpaid 30-minute
10 uninterrupted and duty-free meal periods or one hour of pay at the Employee's
11 regular rate of pay in lieu thereof.
- 12 d. Subclass 4. Rest Break Subclass. All Class Members who were subject to
13 Defendants' policy and/or practice of failing to authorize and permit Employees
14 to take uninterrupted, duty-free, 10-minute rest periods for every four hours
15 worked, or major fraction thereof, and failing to pay one hour of pay at the
16 Employee's regular rate of pay in lieu thereof.
- 17 e. Subclass 5. Payroll Records Subclass. All Class members who were subject to
18 Defendants' policy and/or practice of failing to keep accurate time and wage
19 records as required by California wage-and-hour laws.
- 20 f. Subclass 5. Wage Statement Subclass. All Class Members who, within the
21 applicable limitations period, were not provided with accurate itemized wage
22 statements.
- 23 g. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class
24 Members who were subject to Defendants' policy and/or practice of
25 automatically deducting 30-minutes worth of wages from Employees for
26 alleged meal periods they were denied and/or by understating the hours worked
27 by Employees.

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- 1 h. Subclass 7. Termination Pay Subclass. All Class Members who, within the
2 applicable limitations period, either voluntarily or involuntarily separated from
3 their employment and were subject to Defendants' policy and/or practice of
4 failing to timely pay wages upon termination.
- 5 i. Subclass 8. UCL Subclass. All Class Members who are owed restitution as a
6 result of Defendants' business acts and practices, to the extent such acts and
7 practices are found to be unlawful, deceptive, and/or unfair.

8 35. Plaintiffs reserve the right under California Rule of Court 3.765 to amend or
9 modify the class description with greater particularity or further division into subclasses or
10 limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
11 against Defendants, the Class Period should be adjusted accordingly.

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

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

24 **A. Numerosity**

25 38. The potential members of the Class as defined are so numerous that joinder of all
26 the members of the Class is impracticable. While the precise number of Class Members has not
27 been determined at this time, Plaintiffs are informed and believe that Defendants employ or,
28 during the time period relevant to this lawsuit, employed hundreds of Employees who satisfy the

1 Class definition within the State of California.

2 39. Accounting for employee turnover during the relevant time period increases this
3 number substantially. Plaintiffs allege that Defendants' employment records will provide
4 information as to the number and location of all Class Members.

5 **B. Commonality**

6 40. There are questions of law and fact common to the Class that predominate over any
7 questions affecting only individual Class Members. These common questions of law and fact
8 include:

- 9 a. Whether Defendants failed to pay Employees minimum wages;
- 10 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 11 c. Whether Defendants failed to pay Employees overtime based on proper
12 calculation of the regular rate of pay;
- 13 d. Whether Defendants failed to pay Employees overtime as required under
14 Labor Code § 510;
- 15 e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the
16 applicable IWC Wage Orders, by failing to provide Employees with
17 requisite meal periods or premium pay in lieu thereof;
- 18 f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC
19 Wage Orders, by failing to authorize and permit Employees to take requisite
20 rest breaks or provide premium pay in lieu thereof;
- 21 g. Whether Defendants violated Labor Code § 226(a) by providing Employees
22 with inaccurate wage statements;
- 23 h. Whether Defendants violated Labor Code § 221 by unlawfully deducting
24 from wages;
- 25 i. Whether Defendants violated Labor Code § 204 by failing to timely pay
26 wages;
- 27 j. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to
28 pay wages and compensation due and owing at the time of termination of

employment;

k. Whether Defendants' conduct was willful;

l. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of Class Members' earned wages and work periods;

m. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;

n. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;

o. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*; and

p. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*

C. Typicality

41. The claims of the named Plaintiffs are typical of those of the other Employees. The Class Members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

D. Adequacy of Representation

42. Plaintiffs will fairly and adequately represent and protect the interests of the Employees. Counsel who represent the Employees are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

43. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only individual Employees. Each Employee has been damaged and is entitled to recovery by reason of

1 Defendants' illegal policies or practices of failing to properly compensate Employees.

2 44. 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 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
9 a 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 Employees
11 to vindicate their rights for violations they endured which they would otherwise be foreclosed
12 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

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

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

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

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Against All Defendants)

48. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

49. Defendants failed to pay Employees in the Class minimum wages for all hours worked and provided them with inaccurate wage statements that prevented Plaintiffs and Class Members from learning of these unlawful pay practices.

50. Employees worked hours and did not receive wages, including as alleged above in connection with off-the-clock work. Defendants, and each of them, have imposed difficult to attain job and shift scheduling requirements on Plaintiffs and Class Members, which resulted in off-the-clock work and underpayment of all wages owed to employees over a period of time, while benefiting Defendants. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiffs and Class Members as to minimum wage pay.

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

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1 52. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states:
2 “The minimum wage for employees fixed by the commission is the minimum wage to be paid to
3 employees, and the payment of a less wage than the minimum so fixed is unlawful.”

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

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

17 55. In committing these violations of the California Labor Code, Defendants
18 inaccurately recorded or incorrectly calculated the time worked, and consequently underpaid the
19 actual time worked by Plaintiffs and Class Members. Defendants acted in an illegal attempt to
20 avoid the payment of all earned wages, and other benefits in violation of the California Labor
21 Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.
22 As a result of these violations, Defendants also failed to timely pay all wages earned in accordance
23 with California Labor Code § 1194.

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

28 ///

1 57. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
2 1197.1, Plaintiffs and Class Members are entitled to recover a penalty of \$100.00 for the initial
3 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
4 pay each employee minimum wages.

5 58. Pursuant to California Labor Code § 1194.2, Plaintiffs and Class Members are
6 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
7 interest thereon.

8 59. Defendants have the ability to pay minimum wages for all time worked and have
9 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
10 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

11 60. Wherefore, Plaintiffs and Class Members are entitled to recover the unpaid
12 minimum wages, liquidated damages in an amount equal to the minimum wages unlawfully
13 unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California
14 Labor Code § 1194(a). Plaintiffs and the other members of the Class further request recovery of all
15 unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any
16 statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or
17 other applicable statutes. To the extent minimum wage compensation is determined to be owed to
18 Class Members who have terminated their employment, Defendants' conduct also violates Labor
19 Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time
20 penalties under California Labor Code § 203, which penalties are sought herein on behalf of these
21 Class Members. Defendants' failure to timely pay all wages owed also violated Labor Code § 204
22 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate
23 wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good
24 faith. Further, Plaintiffs and other Class Members are entitled to seek and recover statutory costs.

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE §§ 510, 1194**

27 **(Against All Defendants)**

28 61. Plaintiffs re-allege\ and incorporate all preceding paragraphs, as though set forth in

1 full herein.

2 62. California Labor Code §§ 1194 and 1198 provides that employees in California
3 shall not be employed more than eight (8) hours in any work day, and/or more than forty (40)
4 hours in any workweek, or work a seventh (7th) day in a work week unless they receive additional
5 compensation beyond their regular wages in amounts specified by law.

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

12 64. By their conduct, as set forth herein, Defendants violated California Labor Code §
13 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
14 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
15 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
16 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
17 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
18 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
19 paying Employees wages for all hours worked, under-reporting actual hours worked, and not
20 paying proper overtime and double rates, as detailed above.

21 65. Defendants, and each of them, have intentionally and improperly required Plaintiffs
22 and Class Members to accept changed, adjusted and/or modified hours worked, or otherwise
23 caused them to work off the clock to avoid paying Plaintiffs and Class Members all earned and
24 owed straight time and overtime wages and other benefits, in violation of the California Labor
25 Code, the California Code of Regulations and the IWC Wage Orders and guidelines set forth by
26 the Division of Labor Standards and Enforcement. Defendants have also violated these provisions
27 by requiring Plaintiffs and other similarly situated non-exempt Employees to work through meal
28 periods when they were required to be clocked out. Therefore, Employees were not properly

1 compensated, nor were they paid overtime rates for hours worked in excess of eight hours in a
2 given day, and/or forty hours in a given week. Based on information and belief, Defendants did
3 not make available to Employees a reasonable protocol for correcting time records when
4 Employees worked overtime hours or to fix incorrect time entries that were under recorded by
5 Defendants, to the Employee's detriment. Defendants have also violated these provisions by
6 requiring Plaintiffs and other similarly situated Employees in the Class to work through meal
7 periods when they were required to be clocked out or to otherwise work off the clock to complete
8 their daily job duties.

9 66. Defendants' failure to pay Plaintiffs and Class Members the unpaid balance of
10 regular wages owed and overtime compensation, as required by California law, violates the
11 provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

12 67. Additionally, Labor Code § 558(a) provides "any employer or other person acting
13 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
14 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
15 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
16 pay period for which the employee was underpaid in addition to an amount sufficient to recover
17 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
18 underpaid employee for each pay period for which the employee was underpaid in addition to an
19 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
20 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in
21 this section are in addition to any other civil or criminal penalty provided by law." Defendants
22 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
23 Wage Orders. Accordingly, Plaintiffs and Class Members seek the remedies set forth in Labor
24 Code § 558.

25 68. Defendants' failure to pay compensation in a timely fashion also constituted a
26 violation of California Labor Code § 204, which requires that all wages shall be paid
27 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
28 violation of that provision of the California Labor Code, Defendants have failed to pay all wages

1 and overtime compensation earned by Employees. Each such failure to make a timely payment of
2 compensation to Employees constitutes a separate violation of California Labor Code § 204.

3 69. Employees have been damaged by these violations of California Labor Code §§
4 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

5 70. Consequently, pursuant to California Labor Code, including Labor Code §§ 204,
6 510, and 1194 (and the relevant orders of the Industrial Welfare Commission), Defendants are
7 liable to Employees for the full amount of all their unpaid wages and overtime compensation, with
8 interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory
9 penalties against Defendants, and each of them, and any additional sums as provided by the Labor
10 Code and/or other statutes.

11 71. Further, Plaintiffs and Class Members are entitled to seek and recover reasonable
12 attorneys' fees and costs pursuant to Labor Code §§ 210 and 1194.

13 **THIRD CAUSE OF ACTION**

14 **MEAL BREAK LIABILITY UNDER LABOR CODE §§ 226.7, 512**

15 **(Against All Defendants)**

16 72. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
17 full herein.

18 73. Employees regularly worked shifts greater than five (5) hours and in some
19 instances, greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ
20 someone for a shift of more than five (5) hours without providing him or her with a meal period of
21 not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or
22 her with a second meal period of not less than thirty (30) minutes.

23 74. Defendants failed to provide Employees with meal periods as required under the
24 Labor Code. Employees received short meal periods, were regularly required to work during their
25 meal periods, as discussed above, or were provided with them after working beyond the fifth hour
26 of their shifts, if Defendant provided them at all. Furthermore, upon information and belief, on the
27 occasions when Employees worked more than ten (10) hours in a given shift, they did so without
28 receiving a second uninterrupted, timely and duty-free thirty (30) minute meal period, as required

1 by law.

2 75. Defendants placed the current demands of the job over Plaintiffs and Class
3 Members' lawful meal breaks, resulting in meal breaks that were taken late, shortened due to work
4 demands, or not taken at all. As a result, Defendants' failure to provide Plaintiffs and Class
5 Members with all their legally required off-duty, unpaid meal periods is and will be evidenced by
6 Defendants' business records, or lack thereof.

7 76. Upon information and belief, on the occasions when Employees in the Class
8 worked more than ten (10) hours in a shift, Defendants also failed to provide them with a second,
9 uninterrupted, timely and duty-free meal period as will be evidenced by Defendants' business
10 records, or lack thereof.

11 77. Defendants thus failed to provide Plaintiffs and Class Members with meal periods
12 as required by the Labor Code, including by not providing them with the opportunity to take meal
13 breaks, by providing them late or for less than thirty (30) minutes, or by requiring them to perform
14 work during breaks.

15 78. Moreover, Defendants failed to compensate Employees for each meal period not
16 provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of the
17 applicable IWC Wage Orders, which provides that, if an employer fails to provide an employee a
18 meal period in accordance with this section, the employer shall pay the employee one (1) hour of
19 pay at the employee's regular rate of compensation for each workday that the meal period is not
20 provided. To the extent Defendants did make any such payments to Plaintiffs and Class Members,
21 they failed to do so for the vast majority of the violations. Defendants failed to compensate
22 Employees for each meal period not provided or inadequately provided, as required under Labor
23 Code § 226.7.

24 79. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
25 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal
26 period not provided or deficiently provided, a sum to be proven at trial, as well as the assessment
27 of any statutory penalties against the Defendants, and each of them, in a sum as provided by the
28 Labor Code and other statutes.

1 **FOURTH CAUSE OF ACTION**

2 **REST BREAK LIABILITY UNDER LABOR CODE § 226.7**

3 **(Against All Defendants)**

4 80. Plaintiffs re-allege and incorporate\ all preceding paragraphs, as though set forth in
5 full herein.

6 81. Labor Code § 226.7 and paragraph 12 of the applicable IWC Wage Orders provide
7 that employers must authorize and permit all employees to take rest periods at the rate of ten (10)
8 minutes net rest time per four (4) work hours, or major fraction thereof.

9 82. Employees consistently worked consecutive shifts of at least eight (8) hours and
10 were generally required to work shifts of greater than eight (8) hours total. Pursuant to the Labor
11 Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of not less
12 than ten (10) minutes for each consecutive four (4) hour or longer shift. Defendants failed to
13 provide Employees with timely rest breaks of not less than ten (10) minutes for each consecutive
14 four (4) hours of work, or major fraction thereof, if rest breaks were provided at all. Furthermore,
15 upon information and belief, on the occasions when Employees worked more than ten (10) hours
16 in a given shift, they did so without receiving a third uninterrupted ten (10) minute rest break, as
17 required by law.

18 83. Labor Code § 226.7 and paragraph 12 of the applicable IWC Wage Orders provide
19 that if an employer fails to provide an employee rest period in accordance with this section, the
20 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
21 compensation for each workday that the rest period is not provided.

22 84. Defendants, and each of them, have therefore intentionally and improperly denied
23 rest periods to Plaintiffs and Class Members in violation of Labor Code § 226.7 and paragraph 12
24 of the applicable IWC Wage Orders.

25 85. Defendants failed to authorize and permit Plaintiffs and Class Members to take rest
26 periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
27 with an additional hour of pay at each Employee's effective hourly rate for each day that
28 Defendants failed to provide them with adequate rest breaks, as required under Labor Code §

1 226.7.

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

7 **FIFTH CAUSE OF ACTION**

8 **VIOLATION OF LABOR CODE § 226(a)**

9 **(Against All Defendants)**

10 87. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
11 full herein.

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

19 89. Defendants failed to provide Employees with accurate itemized wage statements in
20 writing, as required by the Labor Code. Specifically, the wage statements given to Employees by
21 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal
22 periods and rest breaks, and automatically deducted wages for alleged meal periods and under
23 recording and/or altering timekeeping entries to the detriment of Class Members, all of which
24 Defendants knew or reasonably should have known were owed to Employees, as alleged
25 hereinabove.

26 90. Throughout the liability period, Defendants intentionally failed to furnish to
27 Plaintiffs and Class Members, upon each payment of wages, itemized statements accurately
28 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-

1 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net
2 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
3 the employee and only the last four digits of his or her social security number or an employee
4 identification number other than a social security number, (8) the name and address of the legal
5 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
6 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
7 Code § 226, amongst other statutory requirements. Defendants knowingly and intentionally failed
8 to provide Plaintiffs and Class Members with such timely and accurate wage and hour statements.

9 91. Plaintiffs and Class Members suffered injury as a result of Defendants' knowing
10 and intentional failure to provide them with the wage and hour statements as required by law and
11 are presumed to have suffered injury and be entitled to penalties under Labor Code § 226(e), as the
12 Defendants have failed to provide wage statements with accurate and complete information as
13 required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and the Plaintiffs
14 and Class Members cannot promptly and easily determine from the wage statement alone one or
15 more of the following: (i) The amount of the gross wages or net wages paid to the employee
16 during the pay period or any of the other information required to be provided on the itemized wage
17 statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which
18 deductions the employer made from gross wages to determine the net wages paid to the employee
19 during the pay period, (iii) The name and address of the employer and, (iv) The name of the
20 employee and only the last four digits of his or her social security number or an employee
21 identification number other than a social security number. For purposes of Labor Code § 226(e)
22 "promptly and easily determine" means a reasonable person [i.e. an objective standard] would be
23 able to readily ascertain the information without reference to other documents or information.

24 92. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code
25 § 226(a), Employees suffered injuries, including among other things confusion over whether they
26 received all wages owed them, the difficulty and expense involved in reconstructing pay records,
27 and forcing them to make mathematical computations to analyze whether the wages paid in fact
28 compensated them correctly for all hours worked.

93. Pursuant to Labor Code §§ 226(a) and 226(e), Employees 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.

94. Labor Code § 226.3 further provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the extent that Labor Code § 226.3 applies, Plaintiffs also seeks such penalties on behalf of themselves and the other Class Members.

SIXTH CAUSE OF ACTION

FAILURE TO KEEP REQUIRED PAYROLL RECORDS

UNDER LABOR CODE § 1174 AND 1174.5

(Against All Defendants)

95. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

96. 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.

97. During the course of Plaintiff's and Employees' employment, Defendants consistently failed to maintain accurate time and wage records for Plaintiff and Employees as required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages, overtime, and premium pay as discussed above.

98. 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.

1 **SEVENTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 221**

3 **(Against All Defendants)**

4 99. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
5 full herein.

6 100. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or
7 receive from an employee any part of wages theretofore paid by said employer to said employee.”
8 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
9 public policy, an employer must timely pay its employees for all hours worked. Defendants failed
10 to do so.

11 101. Defendants unlawfully received and/or collected wages from the Employees in the
12 Class by implementing a policy of automatically deducting vested wages for meal periods that
13 were not provided from Employees, as well as by under recording and understating the hours
14 worked by Employees, as alleged above.

15 102. As a direct and proximate cause of the unauthorized deductions, Employees have
16 been damaged, in an amount to be determined at trial.

17 **EIGHTH CAUSE OF ACTION**

18 **VIOLATION OF LABOR CODE § 203**

19 **(Against All Defendants)**

20 103. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
21 full herein.

22 104. Numerous Employees, including Plaintiff, are no longer employed by Defendants;
23 they either quit Defendants’ employ or were fired there from.

24 105. Defendants failed to pay these Employees all wages due and certain at the time of
25 termination or within seventy-two (72) hours of resignation.

26 106. The wages withheld from these Employees by Defendants remained due and owing
27 for more than thirty (30) days from the date of separation from employment.

28 107. Defendants failed to pay Plaintiffs and Class Members without abatement, all

1 wages as defined by applicable California law. Among other things, these Employees were not
2 paid all regular and overtime wages, including by failing to pay for all hours worked or requiring
3 off-the-clock work or by unlawful under recording and/or altering of time entries to the detriment
4 of Employees, and Defendants failed to pay premium wages owed for unprovided meal periods
5 and rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages
6 within the required time was willful within the meaning of Labor Code § 203.

7 108. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
8 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
9 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
10 to thirty (30) days from the date they were due.

11 **NINTH CAUSE OF ACTION**

12 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

13 **(Against All Defendants)**

14 109. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
15 full herein.

16 110. Plaintiffs, on behalf of themselves, the Employees, and the general public, brings
17 this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as
18 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees
19 and the general public. Plaintiffs seeks to enforce important rights affecting the public interest
20 within the meaning of Code of Civil Procedure § 1021.5.

21 111. Plaintiffs are a "person" within the meaning of Business & Professions Code
22 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
23 relief, restitution, and other appropriate equitable relief.

24 112. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
25 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
26 fraudulent in that Defendants' policy and practice failed to provide the required amount of
27 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiffs and
28 Class Members for all hours worked, due to systematic business practices as alleged herein that

1 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
2 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
3 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
4 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

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

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

18 115. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
19 violation of the Business & Professions Code § 17200 *et seq.*

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

24 117. By the conduct alleged herein, Defendants have engaged and continue to engage in
25 a business practice which violates California and federal law, including but not limited to, the
26 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
27 Code including Sections 201, 202, 203, 204, 218.6, 221, 226, 226.7, 510, 512, 551, 558, 1174,
28 1185, 1194, 1194.2, 1197, and 2802 for which this Court should issue declaratory and other

1 equitable relief pursuant to California Business & Professions Code § 17203 as may be necessary
2 to prevent and remedy the conduct held to constitute unfair competition, including restitution of
3 wages wrongfully withheld.

4 118. As a proximate result of the above-mentioned acts of Defendants, Employees have
5 been damaged, in a sum to be proven at trial.

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

13 **TENTH CAUSE OF ACTION**

14 **PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ.***

15 **(Against All Defendants)**

16 120. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
17 full herein.

18 121. Plaintiffs and Employees are aggrieved employees as defined under Labor Code §
19 2699(c) in that they suffered the violations alleged in this First Amended Complaint and were
20 employed by the alleged violators, Defendants.

21 122. Employees seek wages and penalties under Labor Code §§ 2698 and 2699 for
22 Defendants' violation of all Labor Code provisions included under Labor Code § 2699.5 and
23 includes the penalty provisions, without limitation, based on the following California Labor Code
24 sections: 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1, 1174.5 1194, 1194.2, 1194.3, 1197,
25 1199, 2698, and 2699, *et seq.* The penalties shall be allocated as follows: 75% to the Labor and
26 Workforce Development Agency (LWDA) and 25% to the affected employee.

27 123. Plaintiffs also seek any and all penalties and remedies set forth in Labor Code §
28 558, which states:

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

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

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

16 124. The civil penalties provided for in this section are in addition to any other civil or
17 criminal penalty provided by law. Plaintiffs have exhausted their administrative remedy by
18 sending a certified letter to the LWDA and Defendants postmarked on May 6, 2020. The LWDA
19 has not provided notice of its intent to investigate the alleged violations within 65 calendar days of
20 the postmark date of the letter.

21 **RELIEF REQUESTED**

22 WHEREFORE, Plaintiffs pray for the following relief:

- 23 1. For an order certifying this action as a class action;
- 24 2. For compensatory damages in the amount of the unpaid minimum wages for work
25 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
26 the filing of this action, as may be proven;
- 27 3. For liquidated damages in the amount equal to the unpaid minimum wage and
28 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime
and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees

1 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
2 years prior to the filing of this action, as may be proven;

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

7 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

8 8. For restitution and/or damages for all amounts unlawfully withheld from the wages
9 for all class members in violation of Labor Code § 221, as may be proven;

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

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

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

15 12. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;

16
17 13. For an order enjoining Defendants and their agents, servants, and employees, and
18 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
19 duties adumbrated in this Complaint;

20 14. For all general, special, and incidental damages as may be proven;

21 15. For an award of pre-judgment and post-judgment interest;

22 16. For an award providing for the payment of the costs of this suit;

23 17. For an award of attorneys' fees; and

24 18. For such other and further relief as this Court may deem proper and just.

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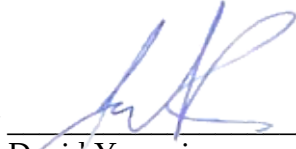
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1 DATED: July 15, 2020

DAVID YEREMIAN & ASSOCIATES, INC.

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4 By


David Yeremian

Jason Rothman

Attorneys for Plaintiffs Cheryl Foster and
Travonn Haley, and all others similarly
situated

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DATED: July 15, 2020

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David Yeremian
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Attorneys for Plaintiffs Cheryl Foster and
Travonn Haley, and all others similarly
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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 535 N. Brand, Blvd. Suite 705, Glendale CA 91203.

Employbridge, LLC

Deckers Brand

[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.

[] ONLY BY ELECTRONIC TRANSMISSION) Only by e-mailing the document(s) to the persons at the e-mail address(es) listed based on notice provided on **July 15, 2020** that, during the **Coronavirus (COVID-19) pandemic**, this office will be working remotely, not able to send physical mail as usual, and is therefore using only electronic mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

[] (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 15, 2020, at Glendale, California.


Natalia Bermudes