

1 DAVID YEREMIAN & ASSOCIATES, INC.

2 David Yeremian (SBN 226337)

3 David@yeremianlaw.com

4 Jason Rothman (SBN 304961)

5 Jason@yeremianlaw.com

6 535 N. Brand Blvd., Suite 705

7 Glendale, California 91203

8 Telephone: (818) 230-8380

9 Facsimile: (818) 230-0308

10 DAVTYAN LAW FIRM, INC.

11 Emil Davtyan (SBN 299363)

12 emil@davtyanlaw.com

13 880 E Broadway

14 Glendale, CA 91205

15 Telephone: (818) 875-2008

16 Facsimile: (818) 722-3974

17 Attorneys for Plaintiff Mary Jean Smith,
18 on behalf of herself and all others similarly situated

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 FOR THE COUNTY OF FRESNO

21 MARY JEAN SMITH, an individual, on behalf
22 of herself and others similarly situated,

23 Plaintiff,

24 vs.

25 NOIA RESIDENTIAL SERVICES, INC., a
26 California corporation; and DOES 1 through 50,
27 inclusive,

28 Defendants.

Case No.: 20CECG01820

CLASS ACTION

Assigned for All Purposes To:

Hon.: Kimberly Gaab

Dept.: 503

FIRST AMENDED 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;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Failure to Reimburse Expenses § 2802;
6. Violation of Labor Code §§ 226(a);
7. Violation of Labor Code § 221;
8. Violation of Labor Code § 203;
9. Violation of Labor Code § 204;
10. Violation of Business & Professions Code § 17200 *et seq.*; and
11. Penalties Pursuant to Labor Code § 2699, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Mary Jean Smith (hereinafter “Plaintiff”), on behalf of herself and all others
2 similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this action on behalf of herself and all similarly situated Employees
6 within the State of California who, at any time from four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendant NOIA
8 RESIDENTIAL SERVICES, INC., a California corporation, and DOES 1 through 50 (all
9 defendants being collectively referred to herein as “Defendants”). Plaintiff alleges that
10 Defendants, and each of them, violated various provisions of the California Labor Code, relevant
11 orders of the Industrial Welfare Commission (IWC), including IWC Wage Order No. 15-2001
12 regulating the wages, hours and working conditions in the household occupation (“Wage Order
13 No. 15”), and California Business & Professions Code, and seeks redress for these violations.

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

20 **THE PARTIES**

21 **A. The Plaintiff**

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

25 **B. The Defendants**

26 4. Defendant NOIA RESIDENTIAL SERVICES, INC., (“NOIA”), is a California
27 corporation and lists its principal offices in Fresno, California. During a portion of the relevant
28 time period that is the subject of this complaint, NOIA has been listed as the employer on the

1 wage statements and other employment related documentation issued to Plaintiff, and upon
2 information and belief, the other Class Members.

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

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

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

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

27 ///

28 ///

- 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

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

- 4 -

FIRST AMENDED CLASS ACTION COMPLAINT

1 12. Plaintiff and Class Members were employed as direct care staff nurses providing
2 residential care to Defendants' clients, who were individuals of all ages with varying degrees of
3 disability and infirmity. Plaintiff performed job duties caring for these customer's every needs,
4 including feeding and dressing them, providing laundry services, assisting with medication
5 management and administration, providing minor medical care, and assisting with their personal
6 hygiene. Plaintiff and the other similarly situated Class Members also spent time during their work
7 shifts performing other related duties for Defendants and their customers, including providing
8 related housekeeping, cooking, laundry, and other cleaning services, and Plaintiff and her co-
9 workers were generally tasked with helping their clients manage their households. Plaintiff
10 estimates and alleges that at least twenty percent (20%) of her daily time was spent on these
11 general housekeeping duties, and upon information and belief this percentage was the same for the
12 other Class Members. Plaintiff and Class Members regularly worked shifts of at least eight (8)
13 hours and often for ten or more hours, and did so on at least five (5) work shifts per work week,
14 while often working six or more. Plaintiff and the Class Members worked these long hours
15 without receiving required meal periods and rest breaks, as they were required to remain on duty
16 during any break time and on call at their patients' side to attend to their needs at all times,
17 Defendants' uniformly applied policies and practices thus exerted control over Class Members
18 during any break they attempted to take.

19 13. Defendants' implemented policies and practices which systematically under-paid
20 wages, including by requiring Plaintiff and Class Members to under-report their hours worked. For
21 example, Defendants instituted a manual time keeping system and required Plaintiff and the Class
22 Members to input times conforming to scheduled hours rather than those they actually worked.
23 Defendants and their managers would pressure Plaintiff, and upon information and belief Class
24 Members, to arrive at Defendants facilities several minutes before their scheduled shifts were set
25 to begin. However, Defendants required them to immediately start working preparing for their
26 shift and performing job duties before they were permitted to record the start of their scheduled
27 shifts. Duties performed during this uncompensated off the clock time included conducting
28 detailed shift transition meetings with outgoing co-workers at shift start up and with incoming co-

1 workers at the end of shifts, and covering further work shift time to cover for shift change
2 Employee who was late. This resulted in the uniform practice of Defendants under-reporting and
3 under-recording of hours worked to the detriment of Class Members, which resulted in substantial
4 unpaid wages owed to Plaintiff and the similarly situated Class Members.

5 14. Therefore, from at least four (4) years prior to the filing of this lawsuit and
6 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
7 Members for all hours worked, including failure to pay both minimum wages and overtime and
8 double time for all hours worked, as required by California Law. Defendants thus failed to pay
9 Employees at least minimum wages for all the time they worked for Defendants in violation of the
10 Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the
11 applicable IWC Wage Orders.

12 15. In addition to the normal shift schedules Plaintiff and Class Members worked after
13 driving to their assigned work locations, Defendants also required them to drive to and attend
14 regularly scheduled work-related meetings during which they were subject to Defendants' control
15 and authority. Class Members were compensated to attend these meetings at \$10.00 per hour, an
16 hourly rate that is under California minimum wage standard. Moreover, upon information and
17 belief, this time spent under Defendants' control and authority was not factored by Defendants
18 into the actual hours worked by Plaintiff and Class Members. Defendants instead paid for this time
19 separately under an "INSERVICE" listing on wage statements, which resulted in the systematic
20 underpayment of minimum wages, overtime, and double time wages to Class Members.

21 16. To the extent that Defendants paid overtime to Plaintiff and Class Members, the
22 above described off the clock work resulted in Defendants' commonly applied policy of beginning
23 to pay overtime wages well after eight (8) hours into a work shift day and/or forty (40) hours a
24 week, as time records and paystubs will evidence. Therefore, from at least four (4) years prior to
25 the filing of this lawsuit and continuing to the present, Defendants had a consistent policy or
26 practice of failing to pay Employees for all hours worked, and failing to pay minimum wages,
27 overtime wages, and double time wages for all time worked as required by California Law and in
28 violation of the Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and

1 4(A)-4(C) of the applicable IWC Wage Orders. Defendants' willful actions resulted in the
2 systematic underpayment of wages to Class Members, including underpayment of overtime and
3 double time pay to Class Members, who were not paid for all their hours worked or were not paid
4 for them at the appropriate applicable rates.

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

13 18. Moreover, Defendants did not include productivity related bonuses/payments in
14 Plaintiff's and Class Members' overtime pay calculations. More specifically, Plaintiff and Class
15 Members received a \$0.25 payment/bonus for each individual client they assisted in administering
16 medication to during their scheduled shifts. Defendants listed this payment on wage statements
17 provided to Class Members as "PassingMed." Despite the fact that these payments were a form of
18 remuneration for work duties and hours worked, and were non-discretionary and automatically
19 paid under Defendants' compensation plan, Defendants did not factor this form of remuneration
20 into the regular hourly rate Defendants used to calculate and pay overtime to Plaintiff and Class
21 Members. This resulted in a systematic and ongoing failure to pay all overtime and double time
22 wages owed, or to pay them at the appropriate rate, under Defendants' uniformly applied policies
23 and payroll practices.

24 19. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
25 meal periods and all the legally required paid, off-duty rest periods to the Plaintiff and the other
26 Class Members, including as required by Labor Code §§ 226.7 and 512, and paragraphs 11 and 12
27 of the applicable IWC Wage Orders.

28 ///

1 20. Plaintiff and the Class Members generally worked shifts of eight hour or more, thus
2 entitling them to at least a first meal periods and in many instances a second meal period during
3 their daily work shifts. However, Defendants' uniformly applied policy or practice denied Plaintiff
4 and the Class Members these required unpaid, off-duty meal periods. Plaintiff and Class Members
5 were required to perform work as ordered by Defendants for more than five (5) hours during a
6 shift, but were often required to do so without receiving a lawful and timely meal break, and were
7 sometimes required to take shortened meal breaks in order to keep up with the demands and
8 pressures from Defendants. For example, Defendants' implemented and communicated a strict
9 policy requiring direct care staff to never leave a client unattended or unassisted throughout their
10 entire work shift, even, upon information and belief, when a client was assigned to multiple Class
11 Members. This resulted in a policy and practice that systematically failed to provide timely,
12 uninterrupted, and duty-free meal periods.

13 21. As discussed above, Plaintiff alleges that she and Class Members are not
14 encompassed under the exception in Wage Order No. 15, as they performed general household
15 work exceeding twenty percent (20%) of their total weekly hours worked.

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

- 19 a. Class Members were not provided full thirty-minute duty free meal periods for
20 work days in excess of five (5) hours and were not compensated one (1) hour's
21 wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7,
22 512, and the applicable Industrial Welfare Commission Wage Order(s);
- 23 b. Class Members were not provided second full thirty-minute duty free meal
24 periods for work days in excess of ten (10) hours;
- 25 c. Class Members were required to work through at least part of their daily meal
26 period(s);

27 ///

28 ///

- 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 the premises during their meal periods.

23. Plaintiff 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. For example, Defendants implemented a strict policy requiring direct care staff to never leave the client unattended or unassisted throughout their entire work shift, even if a client was assigned to multiple Class Members, and thus exerted control over them during their breaks. This resulted in a policy and practice that systematically failed to provide timely, uninterrupted, and duty-free rest breaks.

24. 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 the premises during their rest breaks.

25. 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.

26. Defendants' management also did not reimburse Plaintiff and Class Members for all necessarily incurred expenses in performance of their job duties. Plaintiff incurred required personal cellular phone expenses and clothing expenses in the performance of her job duties, but Defendants failed to reimburse such necessary expenses. For example, Plaintiff was required to purchase medical scrubs while working on Defendants premises, which Defendants did not reimburse for. Furthermore, Defendants management would call Plaintiff on her personal cellular phone to obtain updates on clients and to address job duties and scheduling. Plaintiff estimates that a significant portion of her personal cellular phone and data usage expenses were incurred as a result of these work related calls and messages.

27. In light of the foregoing, Plaintiff bring this action on behalf of herself 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, 558, 1174, 1185, 1194, 1194.2, 1197, 2699, 2802, and California Code of Regulations, Title 8, section 11000 *et seq.*

28. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff and her 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

29. Plaintiff brings this class action on behalf of herself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff 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.”

30. Further, Plaintiff 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. Wage Statement Subclass. All Class Members who, within the
18 applicable limitations period, were not provided with accurate itemized wage
19 statements.
- 20 f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class
21 Members who were subject to Defendants' policy and/or practice of
22 automatically deducting 30-minutes worth of wages from Employees for
23 alleged meal periods they were denied and/or by understating the hours worked
24 by Employees and/or by deducting uniform expenses from their wages.
- 25 g. Subclass 7. Termination Pay Subclass. All Class Members who, within the
26 applicable limitations period, either voluntarily or involuntarily separated from
27 their employment and were subject to Defendants' policy and/or practice of
28 failing to timely pay wages upon termination.

1 h. Subclass 5. Expense Reimbursement Subclass. All Class Members who
2 incurred necessary and reasonable expenses in connection with performing their
3 job duties for Defendants and who were subject to a policy and/or practice
4 under which such expenses were not reimbursed.

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 31. Plaintiff reserves 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 32. 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 the Plaintiff and the other members of the Class, even though Defendants enjoyed the benefit of
17 this work, 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 these employees are
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 33. 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 proposed Class is easily ascertainable.

24 **A. Numerosity**

25 34. 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, Plaintiff is informed and believes that Defendants employ or, during
28 the time period relevant to this lawsuit, employed hundreds of Employees who satisfy the Class

1 definition within the State of California.

2 35. Accounting for employee turnover during the relevant time period increases this
3 number substantially. Plaintiff alleges that Defendants' employment records will provide
4 information as to the number and location of all class members.

5 **B. Commonality**

6 36. 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 as required under
12 Labor Code § 510;
- 13 d. Whether Defendants failed to pay Employees overtime based on proper
14 calculation of the regular rate of pay to include non-discretionary and/or
15 productivity bonuses;
- 16 e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the
17 applicable IWC Wage Orders, by failing to provide Employees with
18 requisite meal periods or premium pay in lieu thereof;
- 19 f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC
20 Wage Orders, by failing to authorize and permit Employees to take requisite
21 rest breaks or provide premium pay in lieu thereof;
- 22 g. Whether Defendants violated Labor Code § 226(a) by providing Employees
23 with inaccurate wage statements;
- 24 h. Whether Defendants violated Labor Code § 221 by unlawfully deducting
25 from wages;
- 26 i. Whether Defendants violated Labor Code § 204 by failing to timely pay
27 wages;

28 ///

- j. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to 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

37. The claims of the named Plaintiff 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

38. Plaintiff will fairly and adequately represent and protect the interest of the Employees. Counsel who represents the Employees are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

39. 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

1 questions of law and fact common to all Employees predominate over any questions affecting only
2 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
3 Defendants' illegal policies or practices of failing to compensate Employees properly.

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

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

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

1 and policies and practices on the Employees and Class as a whole.

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

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGES**

11 **(Against All Defendants)**

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

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

17 46. Employees worked hours and did not receive wages, including as alleged above in
18 connection with off-the-clock work. Defendants also underpaid Plaintiff and the Class Members
19 for their hours worked by failing to pay them at the required minimum wage rate, as also
20 addressed above. Defendants, and each of them, have imposed difficult to attain job and shift
21 scheduling requirements on Plaintiff and Class Members, which resulted in off-the-clock work and
22 underpayment of all wages owed to employees over a period of time, while benefiting Defendants.
23 Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation,
24 applicable to the Class as a whole, as a result of implementing a uniform policy and practice that
25 denied accurate compensation to Plaintiff and the other members of the Class as to minimum wage
26 pay.

27 47. In California, employees must be paid at least the then applicable state minimum
28 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California

1 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
2 timely pay its employees for all hours worked. Defendants failed to do so.

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

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

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

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

26 52. California Labor Code § 1194.2 also provides for the following remedies: “In any
27 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
28 minimum wages fixed by an order of the commission, an employee shall be entitled to recover

1 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

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

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

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

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

27 ///

28 ///

1 **SECOND CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

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

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

25 61. Defendants, and each of them, have intentionally and improperly required Plaintiff
26 and Class Members to accept changed, adjusted and/or modified hours worked, or otherwise
27 caused them to work off the clock to avoid paying Plaintiff and Class Members all earned and
28 owed straight time and overtime wages and other benefits, in violation of the California Labor

1 Code, the California Code of Regulations and the IWC Wage Orders and guidelines set forth by
2 the Division of Labor Standards and Enforcement.. Therefore, Employees were not properly
3 compensated, nor were they paid overtime rates for hours worked in excess of eight hours in a
4 given day, and/or forty hours in a given week. Defendants also underpaid overtime wages earned
5 by failing to include all forms of remuneration in the regular rate it used to calculate and pay
6 overtime. Based on information and belief, Defendants did not make available to Employees a
7 reasonable protocol for correcting time records when Employees worked overtime hours or to fix
8 incorrect time entries that were under recorded by Defendants, to the Employees' detriment.
9 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated
10 Employees in the Class to work through meal periods when they were required to be clocked out
11 or to otherwise work off the clock to complete their daily job duties.

12 62. Moreover, Defendants did not include productivity related bonuses/payments in
13 Plaintiff's and Class Members' overtime pay calculations. More specifically, Plaintiff and Class
14 Members received a \$0.25 payment/bonus for each individual client they assisted in administering
15 medication to during their scheduled shifts. Defendants listed this payment on wage statements
16 provided to Class Members as "PassingMed." Despite the fact that these payments were a form of
17 remuneration for work duties and hours worked, and were non-discretionary and automatically
18 paid under Defendants' compensation plan, Defendants did not factor this form of remuneration
19 into the regular hourly rate Defendants used to calculate and pay overtime to Plaintiff and Class
20 Members. This resulted in a systematic and ongoing failure to pay all overtime and double time
21 wages owed, or to pay them at the appropriate rate, under Defendants' uniformly applied policies
22 and payroll practices.

23 63. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
24 regular wages owed and overtime compensation, as required by California law, violates the
25 provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

26 64. Additionally, Labor Code § 558(a) provides "any employer or other person acting
27 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
28 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil

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

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

17 66. Employees have been damaged by these violations of California Labor Code §§
18 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

19 67. Consequently, pursuant to California Labor Code, including Labor Code §§ 204,
20 510, and 1194 (and the relevant orders of the Industrial Welfare Commission), Defendants are
21 liable to Employees for the full amount of all their unpaid wages and overtime compensation, with
22 interest, plus their reasonable attorneys’ fees and costs, as well as the assessment of any statutory
23 penalties against Defendants, and each of them, and any additional sums as provided by the Labor
24 Code and/or other statutes.

25 68. Further, Plaintiff and Class Members are entitled to seek and recover reasonable
26 attorneys’ fees and costs pursuant to Labor Code §§ 210 and 1194.

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

11 71. Defendants failed to provide Employees with meal periods as required under the
12 Labor Code. Employees received short meal periods, were regularly required to work during their
13 meal periods, as discussed above, if given them at all, or were provided with them after working
14 beyond the fifth hour of their shifts. Furthermore, upon information and belief, on the occasions
15 when Employees worked more than 10 hours in a given shift, they did so without receiving a
16 second uninterrupted thirty (30) minute meal period as required by law.

17 72. Plaintiff further alleges that Plaintiff and Class Members are not exempt from
18 California overtime, meal, and rest laws under California Wage Order No. 15 (“WO15”), as they
19 performed general household work exceeding twenty percent (20%) of their total weekly hours
20 worked, as described above.

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

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

1 pay at the employee's regular rate of compensation for each workday that the meal period is not
2 provided. Defendants failed to compensate Employees for each meal period not provided or
3 inadequately provided, as required under Labor Code § 226.7.

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

9 **FOURTH CAUSE OF ACTION**

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

11 **(Against All Defendants)**

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

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

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

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

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

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

82. Plaintiff further alleges that Plaintiff and Class Members are not exempt from California overtime, meal, and rest laws under California Wage Order No. 15 (“WO15”), as they performed general household work exceeding twenty percent (20%) of their total weekly hours worked, as described above.

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

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES § 2802

(Against All Defendants)

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

85. Throughout the period applicable, Defendants compelled Plaintiff and Class Members to pay out-of-pocket for necessary work related expenses they incurred in the form of clothing and personal cellular phone usage, but Defendants failed to reimburse any such expenses.

86. Plaintiff and Class Members were not reimbursed for these lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the

1 applicable IWC Wage Orders, paragraph 9.

2 87. Therefore, Plaintiff and Class Members are entitled to reimbursement for any and
3 all necessary work-related expenses, as provided for in Labor Code § 2802(b), incurred during the
4 direct discharge of their duties while employed by Defendants, as well as accrued interest on those
5 expenses that were not reimbursed from the date Plaintiff and Class Members incurred those
6 expenses.

7 88. Further, Plaintiff and Class Members are entitled to costs and attorney's fees
8 pursuant to Labor Code § 2802(c).

9 **SIXTH CAUSE OF ACTION**

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

11 **(Against All Defendants)**

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

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

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

27 92. Throughout the liability period, Defendants intentionally failed to furnish to
28 Plaintiff and Class Members, upon each payment of wages, itemized statements accurately

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

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

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

1 compensated them correctly for all hours worked.

2 95. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
3 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
4 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
5 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
6 award of costs and reasonable attorneys' fees.

7 **SEVENTH CAUSE OF ACTION**

8 **VIOLATION OF LABOR CODE § 221**

9 **(Against All Defendants)**

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

12 97. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
13 receive from an employee any part of wages theretofore paid by said employer to said employee."
14 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
15 public policy, an employer must timely pay its employees for all hours worked. Defendants failed
16 to do so.

17 98. Defendants unlawfully received and/or collected wages from the Employees in the
18 Class by implementing a policy of automatically deducting vested wages for meal periods that
19 were not provided from Employees, as well as by rounding down and understating the hours
20 worked by Employees as alleged above.

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

23 **EIGHTH CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE § 203**

25 **(Against All Defendants)**

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

28 ///

1 101. Numerous Employees are no longer employed by Defendants; they either quit
2 Defendants' employ or were fired there from.

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

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

7 104. Defendants failed to pay Plaintiff and Class Members without abatement, all wages
8 as defined by applicable California law. Among other things, these Employees were not paid all
9 regular and overtime wages, including by failing to pay for all hours worked or requiring off the
10 clock work or by unlawful rounding of time entries to the detriment of Employees, and failed to
11 pay premium wages owed for unprovided meal periods and rest periods, as further detailed in this
12 Complaint. Defendants' failure to pay said wages within the required time was willful within the
13 meaning of Labor Code § 203.

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

18 **NINTH CAUSE OF ACTION**

19 **VIOLATION OF LABOR CODE § 204**

20 **(Against All Defendants)**

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

23 107. Labor Code § 204 instructs that: "All wages, ...earned by any person in any
24 employment are due and payable twice during each calendar month, on days designated in
25 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
26 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
27 during which the labor was performed, and labor performed between the 16th and the last day,
28 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following

1 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment
2 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
3 calendar days following the close of the payroll period.” As detailed above, Defendants
4 maintained a consistently applied policy and practice of not paying all wages earned between the
5 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
6 between the 16th and the last day of the month between the 1st and 10th day of the following month.
7 Defendants similarly failed to pay all wages earned by not more than seven calendar days
8 following the close of the payroll period. These failures all arose from either Defendants’ failure to
9 pay for all hours worked.

10 108. All wages due and owing to Plaintiff and the Class Members, including as required
11 under Labor Code § 510, were therefore not timely paid by Defendants, as addressed in detail
12 above. Additionally, wages required by Labor Code § 1194 and other sections became due and
13 payable to each Class Member in each pay period that he or she was not provided with a meal
14 period or rest period or paid straight or overtime wages or commissions to which he or she was
15 entitled.

16 109. Defendants thus violated Labor Code § 204 by systematically refusing to pay
17 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
18 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
19 payday for the period involved, not less than the applicable minimum wage for all hours worked in
20 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
21 hours than those fixed by the order or under conditions of labor prohibited by the order is
22 unlawful.” Plaintiff and the Class Members may therefore pursue damages and penalties for
23 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
24 penalties under paragraph 20 of the applicable IWC Wage Orders.

25 110. As a result of the unlawful acts of Defendants, Plaintiff and Class Members seek to
26 represent they have been deprived of wages in amounts to be determined at trial, and they are
27 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
28 pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the

1 applicable IWC Wage Orders.

2 **TENTH CAUSE OF ACTION**

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

4 **(Against All Defendants)**

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

7 112. Plaintiff, on behalf of herself, Employees, and the general public, brings this claim
8 pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in
9 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the
10 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
11 meaning of Code of Civil Procedure § 1021.5.

12 113. Plaintiff is a “person” within the meaning of Business & Professions Code
13 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
14 relief, restitution, and other appropriate equitable relief.

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

24 115. Wage-and-hour laws express fundamental public policies. Paying employees their
25 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
26 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
27 vigorously to enforce minimum labor standards, to ensure that employees are not required or
28 permitted to work under substandard and unlawful conditions, and to protect law-abiding

1 employers and their employees from competitors who lower costs to themselves by failing to
2 comply with minimum labor standards.

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

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

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

15 119. By the conduct alleged herein, Defendants have engaged and continue to engage in
16 a business practice which violates California and federal law, including but not limited to, the
17 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
18 Code including Sections 204, 226, 226.7, 227.3, 512, 1194, 1197, 1198, and 2802 for which this
19 Court should issue declaratory and other equitable relief pursuant to California Business &
20 Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to
21 constitute unfair competition, including restitution of wages wrongfully withheld.

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

24 121. Unless restrained by this Court Defendants will continue to engage in such
25 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
26 should make such orders or judgments, including the appointment of a receiver, as may be
27 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
28 deceptive practice prohibited by the Business & Professions Code, including but not limited to the

1 disgorgement of such profits as may be necessary to restore Employees to the money Defendants
2 have unlawfully failed to pay.

3 **ELEVENTH CAUSE OF ACTION**

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

5 **(Against All Defendants)**

6 122. Plaintiffs reallege and incorporates all preceding paragraphs, as though set forth in
7 full herein.

8 123. Plaintiffs and Employees are aggrieved employees as defined under Labor Code §
9 2699(c) in that they suffered the violations alleged in this First Amended Complaint and were
10 employed by the alleged violators, Defendants.

11 124. Employees seek wages and penalties under Labor Code §§ 2698 and 2699 for
12 Defendants' violation of all Labor Code provisions included under Labor Code § 2699.5 and
13 includes the penalty provisions, without limitation, based on the following California Labor Code
14 sections: 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1, 1194, 1194.2, 1194.3, 1197, 1199,
15 2698, and 2699., 2802, *et seq.* The penalties shall be allocated as follows: 75% to the Labor and
16 Workforce Development Agency (LWDA) and 25% to the affected employee.

17 125. Plaintiffs also seek any and all penalties and remedies set forth in Labor Code §
18 558, which states:

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

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

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

3 126. The civil penalties provided for in this section are in addition to any other civil or
4 criminal penalty provided by law.

5 127. Plaintiffs have exhausted their administrative remedy by sending a certified letter to
6 the LWDA and Defendants postmarked on June 5, 2020. The LWDA has not provided notice of
7 its intent to investigate the alleged violations within 65 calendar days of the postmark date of the
8 letter

9 **RELIEF REQUESTED**

10 WHEREFORE, Plaintiff prays for the following relief:

- 11 1. For an order certifying this action as a class action;
- 12 2. For compensatory damages in the amount of the unpaid minimum wages for work
13 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
14 the filing of this action, as may be proven;
- 15 3. For liquidated damages in the amount equal to the unpaid minimum wage and
16 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 17 4. For compensatory damages in the amount of all unpaid wages, including overtime
18 and double-time pay, as may be proven;
- 19 5. For compensatory damages in the amount of the hourly wage made by Employees
20 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
21 years prior to the filing of this action, as may be proven;
- 22 6. For compensatory damages in the amount of the hourly wage made by Employees
23 for each day requisite rest breaks were not provided or were deficiently provided where no
24 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
25 be proven;
- 26 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 27 8. For restitution and/or damages for all amounts unlawfully withheld from the wages
28 for all class members in violation of Labor Code § 221, as may be proven;

///

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

3 10. For restitution and/or damages for all amounts unlawfully withheld from the wages
4 for all class members in violation of Labor Code § 204, as may be proven;

5 11. For damages and restitution for failure to reimburse all reasonable and necessary
6 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

7 12. For restitution for unfair competition pursuant to Business & Professions Code
8 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

9 13. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven

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

13 15. For all general, special, and incidental damages as may be proven;

14 16. For an award of pre-judgment and post-judgment interest;

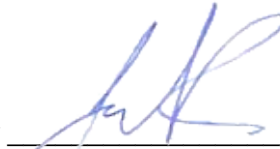
15 17. For an award providing for the payment of the costs of this suit;

16 18. For an award of attorneys' fees; and

17 19. For such other and further relief as this Court may deem proper and just.

18
19 DATED: September 11, 2020

DAVID YEREMIAN & ASSOCIATES, INC.

20
21 By 

David Yeremian

Jason Rothman

Attorneys for Plaintiff Mary Jean Smith
and all others similarly situated

- 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: September 11, 2020

By

Attorneys for Plaintiff Mary Jean Smith
and all others similarly situated

- 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

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.

Amy R. Lovegren-Tipton
ATipton@tiptonlegal.com
LAW OFFICE OF
AMY R. LOVEGREN-TIPTON, APLC
 5703 N. West Avenue, Suite 103
 Fresno, California 93711

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

[X] (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 **September 11, 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 September 11, 2020, at Glendale, California.

Natalia Bermudes