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

MARGARET MATTHEWS, OKEEM SMITH,
TOMAS VERDUZCO ALCALA, and DARRYL
KNOX, as individuals and on behalf of all others
similarly situated, and as private attorneys general,

Plaintiffs,

vs.

UNITED NATURAL FOODS WEST, INC., a
California corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. S-CV-0046420

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

- (1) Unreimbursed Business Expenses
(Lab. Code § 2802);**
- (2) Unpaid Sick Pay Wages
(Lab. Code §§ 201-204, 233, 246)**
- (3) Unpaid Minimum Wages
(Lab. Code §§ 1194, 1197, 1197.1)**
- (4) Unpaid Overtime
(Lab. Code §§ 510, 1198)**
- (5) Meal Period Violations
(Lab. Code §§ 226.7, 512);**
- (6) Rest Period Violations
(Lab. Code §§ 226.7, 512);**
- (7) Inaccurate Itemized Wage Statements
(Lab. Code § 226(a));**
- (8) Unfair or Unlawful Business Practices
(Bus. & Prof. Code §§ 17200 et seq.); and**
- (9) Violation of Labor Code
(Lab. Code § 2698 et seq.)**

DEMAND OVER \$25,000.00

1 On behalf of themselves and other similarly situated current and former employees of
2 Defendants, and as a proxy for the State of California, Plaintiffs Margaret Matthews, Okeem Smith,
3 Tomas Verduzco Alcala, and Darryl Knox submit this Second Amended Class and Representative
4 Action Complaint (the “Complaint”) against Defendant, United Natural Foods West, Inc., and Does 1
5 through 50 (collectively, “Defendants”).

6 INTRODUCTION

7 1. This class and representative action challenges systemic employment practices resulting
8 in violations of the California Labor Code against individuals who worked for Defendants. The
9 Complaint addresses Defendants’ violations of Labor Code sections 201-204, 226, 226.7, 233, 246, 510,
10 512, 1182.12, 1197, 1198, and 2802, and seeks penalties, damages, and other relief pursuant to, among
11 other provisions, Labor Code sections 210, 218, 218.5, 218.6, 248.5, 558, 1194, 1194.2, 1197.1, and
12 2698 et seq., and the Unfair Competition Law, codified at Business and Professions Code sections
13 17200 *et seq.* (the “UCL”).¹

14 2. Plaintiffs are informed and believe that Defendants have jointly and severally acted
15 intentionally and with deliberate indifference and conscious disregard to the rights of employees by
16 failing to reimburse necessary and reasonable business expenses, pay all minimum wages and overtime
17 wages owed, pay all sick pay wages owed, provide duty-free meal periods and rest periods, and provide
18 accurate itemized wage statements.

19 3. Defendants routinely fail to reimburse Plaintiffs and other employees for necessary
20 business expenses incurred in performing their work for Defendants. Specifically, Plaintiffs and other
21 employees are required to work from their homes and to use their personal cell phones. As a result,
22 Plaintiffs and other employees were required to have internet service and personal cell phone service.
23 Although the costs of internet service are costs of Defendants’ business, Defendants fail to reimburse
24 Plaintiffs and other employees for the costs of internet access and personal cell phone service.

25 4. Defendants also routinely fail to pay all minimum wages and overtime wages. First,
26 Plaintiffs and other non-exempt employees performed work while off the clock, including during meal
27 periods, and time undergoing mandatory drugs testing and/or examination required as a condition of
28

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 employment. Second, Plaintiffs and other non-exempt employees earn non-hourly remuneration,
2 including for example for wellness credits, shift differential pay, state of emergency bonuses, and
3 quarterly bonuses that Defendants either fail to consider or improperly consider when calculating the
4 regular rate of pay for purposes of paying overtime wages. Third, Defendant, as a matter of established
5 company policy and procedure, administered a uniform practice of rounding the actual time worked and
6 recorded by Plaintiffs and other non-exempt employees, always to the benefit of Defendant, so that
7 during the course of their employment, Plaintiffs and other non-exempt employees were paid less than
8 they would have been paid had they been paid for actual recorded time rather than “rounded” time.

9 5. Defendants also routinely fail to pay sick pay wages at the regular rate of pay. As
10 discussed above, Plaintiffs and other non-exempt employees earn non-hourly remuneration, including
11 for example for wellness credits, shift differential pay, state of emergency bonuses, and quarterly
12 bonuses that Defendants either fail to consider or improperly consider when calculating the regular rate
13 of pay for purposes of paying sick pay wages. Rather than pay sick pay wages at the regular rate of pay,
14 Defendants underpay sick pay wages to Plaintiffs and other non-exempt employees at their base rates of
15 pay.

16 6. On shifts of at least 3.5 hours of work, Defendants also routinely fail to provide Plaintiffs
17 and other non-exempt employees with duty-free 10-minute rest periods. On shifts exceeding five hours
18 of work, Defendants also routinely fail to provide Plaintiffs and other non-exempt employees with duty-
19 free 30-minute meal periods within the first five hours of work. Specifically, Plaintiffs and other non-
20 exempt employees are denied their opportunity to take timely, duty-free meal and rest periods. Instead,
21 when Plaintiffs and other non-exempt employees are allowed to take meal periods, the meal periods are
22 not provided until after the fifth hour of work. The meal periods also are often less than 30 minutes in
23 length or interrupted, and the rest periods also are often less than 10 minutes in length or interrupted.
24 Nonetheless, Defendants also routinely fail to pay Plaintiffs and other non-exempt employees the
25 requisite meal and rest period premium pay of an additional hour of regular rate wages.

26 7. As a result of the above practices, Defendants also routinely fail to provide accurate
27 itemized wage statements to Plaintiffs and other non-exempt employees. Specifically, Defendants fail to
28 furnish Plaintiffs and other non-exempt employees with wage statements that accurately show and

1 itemize all applicable hourly rates, total hours worked, gross wages earned, and net wages earned. The
2 wage statements Defendant provided to Plaintiffs and Class also failed to identify the rates of pay and
3 number of hours worked for earnings entries such as “Misc. Payment” and “Other” items of pay.

4 8. Plaintiffs are informed and believe that Defendants have engaged in, among other things,
5 a system of willful violations of the Labor Code by creating and maintaining policies, practices, and
6 customs that knowingly deny its employees the above stated rights and benefits.

7 9. The policies, practices, and customs of Defendants resulted in unjust enrichment of
8 Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of
9 the Labor Code.

10 JURISDICTION AND VENUE

11 10. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of
12 Defendants’ violations of Sections 201-204, 226, 226.7, 233, 246, 510, 512, 1182.12, 1197, 1197.1,
13 1198, and 2802, and the UCL.

14 11. Venue is proper in the County of Placer. Plaintiff Matthews worked for Defendants in
15 Rocklin, California.

16 PARTIES

17 12. Plaintiff Matthews began working for Defendants in or about October of 2019 and
18 worked in California for Defendants for 30 or more days within a year. Plaintiff Matthews was paid on
19 an hourly basis as a non-exempt employee and received non-hourly remuneration, including wellness
20 credits and quarterly bonuses. Plaintiff Matthews worked more than 3.5 hours in a workday, but she
21 regularly was provided neither duty-free 10-minute rest periods nor duty-free 30-minute meal periods
22 within the first five hours of work. Nor was Plaintiff Matthews paid premium pay of an additional hour
23 of regular rate wages for missed meal and rest periods. Plaintiff Matthews also worked more than eight
24 hours in a workday or 40 hours in a workweek, but she was not paid all due overtime wages.
25 Throughout her employment, Plaintiff Matthews accrued and actually used sick leave. When sick leave
26 was used in workweeks that she earned non-hourly remuneration in addition to her base hourly wages,
27 sick pay wages were paid at Plaintiff Matthew’s base rate of pay rather than her regular rate of pay.
28 Plaintiff Matthews also regularly worked from home and incurred costs for internet service to perform

1 work duties for Defendants. She, however, was not reimbursed for the expenses. Plaintiff Matthews also
2 was not provided with accurate itemized wage statements.

3 13. Plaintiff Smith has been employed by Defendants in California from June of 2008 and
4 has been at all times classified by Defendants as a non-exempt employee, paid on an hourly basis, and
5 entitled to the legally required meal and rest periods and payment of minimum and overtime wages due
6 for all time worked.

7 14. Plaintiff Alcala was employed by Defendants in California from August of 2020 to
8 March of 2021 and was at all times classified by Defendants as a non-exempt employee, paid on an
9 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and
10 overtime wages due for all time worked.

11 15. Plaintiff Knox was employed by Defendants in California from September of 2018
12 through July of 2021 and was at all times classified by Defendants as a non-exempt employee, paid on
13 an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and
14 overtime wages due for all time worked.

15 16. Plaintiffs thus are victims of the policies, practices, and customs of Defendants
16 complained of in this action in ways that have deprived them of the rights guaranteed by the Labor
17 Code and the UCL.

18 17. Plaintiffs are informed and believe that Defendant, United Natural Foods West, Inc., was
19 and is a California corporation. Plaintiffs are informed and believe that at all times herein mentioned
20 named defendants and Does 1 through 50, were and are corporations, business entities, individuals, or
21 partnerships that are and were licensed to do business and actually doing business in the State of
22 California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are
23 subject to Sections 201-204, 226, 226.7, 233, 246, 510, 512, 1182.12, 1197, 1197.1, 1198, and 2802,
24 and the UCL.

25 18. Plaintiffs do not know the true names or capacities of the defendants sued herein as Does
26 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are sued
27 under such fictitious names. Plaintiffs pray for leave to amend this Complaint when the true names and
28 capacities are known. Plaintiffs are informed and believe that each of said fictitious defendants was

1 responsible in some way for the matters alleged herein and proximately caused the illegal employment
2 practices, wrongs, and injuries complained of herein.

3 19. At all times herein mentioned, each of said Defendants participated in the doing of the
4 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of
5 the other Defendants, as well as the agents of all Defendants, and were acting within the course and
6 scope of said agency and employment.

7 20. Plaintiffs are informed and believe that at all times material hereto, each of said
8 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,
9 each of the other Defendants and was acting within the course and scope of such agency, employment,
10 joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by
11 certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or
12 omissions of the acting Defendants.

13 21. Plaintiffs are informed and believe that at all times material hereto each of the
14 Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in proximately
15 causing the alleged harms, or (ii) were members of, engaged in, and acting within the course and scope
16 of, and in pursuance of, a joint venture, partnership, or common enterprise.

17 CLASS ACTION ALLEGATIONS

18 22. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiffs seek class
19 certification of the following classes: (i) all current and former employees of Defendants in the State of
20 California who worked at any time from May 11, 2019, through June 30, 2022 (the “Exempt Class”),
21 (ii) all current and former non-exempt employees of Defendants in the State of California who worked
22 at any time from October 5, 2019, through June 30, 2022 (the “Non-Exempt Class”); and (iii) all current
23 and former non-exempt employees of Defendants in the State of California who were paid sick pay
24 wages at any time from March 23, 2017, through June 30, 2022 (the “Sick Pay Class”). The Exempt
25 Class, Non-Exempt Class, and Sick Pay Class are collectively referred to as the “Class.”

26 23. **Numerosity and Ascertainability:** The members of the Class are so numerous that
27 joinder of all members would be impractical, if not impossible. The identities of the members of the
28 Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiffs

are informed and believe that Defendants violated Sections 201-204, 226, 226.7, 233, 246, 510, 512, 1182.12, 1197, 1198, and 2802, and the UCL against Plaintiffs and the Class by failing to reimburse necessary and reasonable business expenses, pay all minimum wages and overtime wages owed, pay all sick pay wages owed, provide duty-free meal and rest periods, and provide accurate itemized wage statements.

24. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's attorneys are ready, willing, and fully and adequately able to represent Plaintiffs and the Class. Plaintiffs' attorneys have prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-and-hour class actions currently pending in California state and federal courts.

25. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst the claims of Plaintiffs and of the Class. Plaintiffs are informed and believe that Defendants uniformly administer a corporate policy and practice of routinely failing (i) to reimburse necessary and reasonable business expenses, (ii) pay all minimum wages and overtime wages owed, (iii) pay all sick pay wages owed, (iv) provide duty-free meal and rest periods, and (v) provide accurate itemized wage statements.

26. **Typicality:** The claims of Plaintiffs are typical of the claims of all members of the Class in that Plaintiffs suffered the alleged harms in a similar and typical manner as other members of the Class suffered. As with other members of the Class, Plaintiffs were paid on an hourly basis as a non-exempt employee and received non-hourly remuneration, including wellness credits and quarterly bonuses. Plaintiffs worked more than 3.5 hours in a workday, but they regularly were provided neither duty-free 10-minute rest periods nor duty-free 30-minute meal periods within the first five hours of work. Nor were Plaintiffs paid premium pay of an additional hour of regular rate wages for missed meal and rest periods. Plaintiffs also worked more than eight hours in a workday or 40 hours in a workweek, but they were not paid all due overtime wages. Throughout their employments, Plaintiffs accrued and actually used sick leave. When sick leave was used in workweeks that they earned non-hourly remuneration in addition to their base hourly wages, sick pay wages were paid at Plaintiff's base rate of pay rather than their regular rates of pay. Plaintiffs also regularly worked from home and incurred costs

1 for internet service as well as for personal cell phone service to perform work duties for Defendants.
2 They, however, were not reimbursed for the expenses. Plaintiffs also were not provided with accurate
3 itemized wage statements. Plaintiffs thus are members of the Class and have suffered the alleged
4 violations of the Labor Code.

5 27. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
6 in establishing minimum working conditions and requirements in California. These labor standards
7 protect employees from onerous terms and conditions of employment or exploitation by employers who
8 have superior economic and bargaining power.

9 28. The nature of this action and the format of laws available to Plaintiffs and members of
10 the Class make the class action format a particularly efficient and appropriate procedure to redress the
11 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate
12 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and
13 overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
14 legal resources. Requiring each member of the Class to pursue an individual remedy would also
15 discourage the assertion of lawful claims by employees who would be disinclined to file an action
16 against their former or current employer for real and justifiable fear of retaliation and permanent
17 damage to their careers at their current or subsequent employment.

18 29. The prosecution of separate actions by individual members of the Class, even if possible,
19 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
20 members of the Class that would establish potentially incompatible standards of conduct for
21 Defendants, or (b) adjudications with respect to individual members of the Class that would, as a
22 practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests
23 of other members of the Class not parties to the adjudications. Further, the claims of the individual
24 members of the Class are not sufficiently large to warrant vigorous individual prosecution considering
25 the concomitant costs and expenses.

26 30. Defendants' pattern, practice, and uniform administration of corporate policy in violation
27 of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the
28 rights of Plaintiff and the Class under Sections 201-204, 210, 218, 218.5, 218.6, 226, 226.7, 233, 246,

248.5, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5 to recover damages and restitution, including unpaid wages and premium wages and interest thereon, applicable penalties, liquidated damages, reasonable attorneys' fees, and costs of suit.

31. This action is brought for the benefit of the Class, which is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those funds being improperly withheld by Defendant.

FIRST CAUSE OF ACTION

Unreimbursed Business Expenses (Lab. Code § 2802)

(By Plaintiffs, the Exempt Class, and Non-Exempt Class Against All Defendants)

32. The preceding paragraphs are re-alleged and incorporated by this reference.

33. Section 2802 requires that an employer must reimburse employees for all necessary expenditures and losses incurred in the performance of their jobs. Section 2802 is intended to prevent employers from placing their operating expenses and cost of doing business on employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

34. As a matter of policy and practice, Defendants fail to reimburse Plaintiffs, the Exempt Class, and the Non-Exempt Class for necessary business expenses incurred in performing their work for Defendants. As a matter of policy and practice, Plaintiffs, the Exempt Class, and the Non-Exempt Class were required to work from their homes and, as a result, were required to have internet service, as well as personal cell phone service. Although the costs of internet service and personal cell phone service are expenses of Defendants' business, Defendants fail to reimburse Plaintiffs, the Exempt Class, and the Non-Exempt Class for the costs of internet access.

35. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiffs, the Exempt Class, and the Non-Exempt Class to recover unreimbursed expenses, including interest thereon, attorneys' fees, and costs of suit.

1 **SECOND CAUSE OF ACTION**

2 **Unpaid Sick Pay Wages (Lab. Code §§ 201-204, 210, 233, 246)**

3 **(By Plaintiffs and the Sick Pay Class Against All Defendants)**

4 36. The preceding paragraphs are re-alleged and incorporated by this reference.

5 37. Section 233 provides that an employer must permit an employee to use accrued sick
6 leave in accordance with Section 246.5 at the employee's then current rate of entitlement. Section 246
7 provides that an employee is entitled to sick pay wages for use of accrued sick leave pursuant to Section
8 246.5. Specifically, once accrued sick leave is used as paid sick time, an employee has a vested right to
9 sick pay wages, which an employer must calculate and compensate based on one of two calculations: (i)
10 "Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of
11 pay for the workweek in which the employee uses paid sick time, whether or not the employee actually
12 works overtime in that workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated
13 by dividing the employee's total wages, not including overtime premium pay, by the employee's total
14 hours worked in the full pay periods of the prior 90 days of employment." Under Sections 218 and 233,
15 employees may sue to recover underpaid sick pay wages as damages.

16 38. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiffs and the
17 Sick Pay Class at the incorrect rate of pay. Plaintiffs and the Sick Pay Class regularly use accrued sick
18 leave in workweeks in which they also earn non-hourly remuneration, including, for example, for
19 wellness credits, shift differential, state of emergency bonuses, and quarterly bonuses. As a matter of
20 policy and practice, Defendants pay sick pay wages to Plaintiffs and the Sick Pay Class at the base
21 hourly rate of pay, as opposed to the regular rate of pay, which would consider all non-hourly
22 remuneration in addition to base hourly wages, or the rate resulting from dividing the employee's total
23 wages, not including overtime premium pay, by the employee's total hours worked in the full pay
24 periods of the prior 90 days of employment. As a result, Defendants underpay sick pay wages to
25 Plaintiffs and the Sick Pay Class.

26 39. Section 204 provides that wages generally are due and payable twice during each
27 calendar month and are to be paid no later than the payday for the next regular payroll period.
28 Consistent with Section 204, Section 246 specifically requires that, upon use of accrued sick leave,

1 vested sick pay wages are due and to be paid no later than the payday for the next regular payroll period
2 after accrued sick leave is used as paid sick time. Similarly, Section 201 provides that if an employer
3 discharges an employee, wages earned and unpaid at the time of discharge are due and payable
4 immediately. Section 202 provides that an employee is entitled to receive all unpaid wages no later than
5 72 hours after an employee quits his or her employment, unless the employee has given 72-hour notice
6 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
7 quitting. The Labor Code penalizes untimely payments. For example, Section 203 provides that if an
8 employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then the wages of
9 the employee shall continue as a penalty from the due date, and at the same rate until paid, but the
10 wages shall not continue for more than thirty (30) days. Likewise, Section 210 provides penalties for
11 violations of Section 204 and untimely payments during employment. Under Sections 203, 210, and
12 218, employees may sue to recover applicable penalties.

13 40. As alleged herein and as a matter of policy and practice, Defendants routinely underpay
14 sick pay wages and thus do not timely pay Plaintiffs and the Sick Pay Class all owing and underpaid
15 sick pay wages. As a result, Defendants violate Sections 201-204, 210, 233, and 246, among other
16 Labor Code provisions. Plaintiffs is informed and believe that Defendants were advised by skilled
17 lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiffs'
18 allegations, especially since the California Supreme Court has explained that "[c]ourts have recognized
19 that 'wages' also include those benefits to which an employee is entitled as a part of his or her
20 compensation, including money, room, board, clothing, vacation pay, *and sick pay*." *Murphy v. Kenneth*
21 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007) (emphasis added). Because Defendants willfully fail to
22 timely pay Plaintiffs and the Sick Pay Class all sick pay wages due, Defendants are subject to applicable
23 penalties.

24 41. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
25 entitles Plaintiffs and the Sick Pay Class to underpaid sick pay wages, including interest thereon,
26 applicable penalties, attorneys' fees, and costs of suit.
27
28

1 **THIRD CAUSE OF ACTION**

2 **Unpaid Minimum Wages (Lab. Code §§ 1194, 1197, 1197.1)**

3 **(By Plaintiffs and the Non-Exempt Class Against All Defendants)**

4 42. The preceding paragraphs are re-alleged and incorporated by this reference.

5 43. Sections 1182.12 and 1197 provide a minimum wage to be paid to employees and make
6 unlawful the payment of a lesser wage. The applicable IWC Wage Order defines compensable time as
7 “the time during which an employee is subject to the control of an employer, and includes all the time
8 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8,
9 § 11040(2)(K) (defining “Hours Worked”). California law thus generally requires that employers pay
10 employees at least the minimum wage for all hours worked.

11 44. As a matter of policy and practice, Defendants fail to pay at least minimum wage or any
12 wage at all for all hours worked by Plaintiffs and the Non-Exempt Class, including the time that
13 Plaintiffs and the Non-Exempt Class spend working off the clock, including work time during off-the-
14 clock meal periods, and time undergoing mandatory drugs testing and/or examination required as a
15 condition of employment. Defendants do not pay any wages for this time. As a matter of policy and
16 practice, Plaintiffs and the Non-Exempt Class are not paid any wages for these hours worked. As such,
17 Plaintiffs and the Non-Exempt Class are owed unpaid minimum wages.

18 45. Defendant, also, as a matter of established company policy and procedure, administered
19 a uniform practice of rounding the actual time worked and recorded by Plaintiffs and other non-exempt
20 employees, always to the benefit of Defendant, so that during the course of their employment, Plaintiffs
21 and other non-exempt employees were paid less than they would have been paid had they been paid for
22 actual recorded time rather than “rounded” time. Defendant’s policy and practice not to pay Plaintiffs
23 and other Non-Exempt Class for all time worked, is evidenced by DEFENDANT’s business records.

24 46. Based on Defendants’ failure to pay all minimum wages to Plaintiffs and the Non-
25 Exempt Class, and as a matter of policy and practice, Defendants fail to timely pay all due wages during
26 employment and fail to timely pay all due wages upon separation of employment. On information and
27 belief, Defendants were advised by skilled lawyers and knew, or should have known, of the mandates of
28 the Labor Code as it relates to Plaintiffs’ allegations. Because Defendants willfully fail to timely pay

1 Plaintiffs and the Non-Exempt Class all minimum wages due, Defendants are subject to applicable
2 penalties.

3 47. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
4 entitles Plaintiffs and the Non-Exempt Class to recover unpaid minimum wages, including interest
5 thereon, liquidated damages, applicable penalties, attorneys' fees, and costs of suit.

6 **FOURTH CAUSE OF ACTION**

7 **Unpaid Overtime (Lab. Code §§ 510 and 1198)**

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

9 48. The preceding paragraphs are re-alleged and incorporated by this reference.

10 49. Section 510 and the applicable IWC Wage Order provide that "[a]ny work in excess of
11 eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight
12 hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no
13 less than one and one-half times the regular rate of pay for an employee" and that "[a]ny work in excess
14 of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for
15 an employee." Section 1198 makes unlawful conditions of labor that are prohibited by the applicable
16 IWC Wage Order.

17 50. As discussed above and as a matter of policy and practice, Defendants fail to pay all
18 overtime wages owing to Plaintiffs and the Non-Exempt Class. Plaintiffs and the Non-Exempt Class
19 regularly work more than eight hours of work in a workday or 40 hours of work in a workweek. As a
20 matter of policy and practice, Plaintiffs and the Non-Exempt Class earn non-hourly remuneration,
21 including for example for wellness credits, shift differential pay, state of emergency bonuses, and
22 quarterly bonuses that Defendants either fail to consider or improperly consider when calculating the
23 regular rate of pay for purposes of paying overtime wages. As such, Plaintiffs and the Non-Exempt
24 Class are owed overtime wages.

25 51. Based on Defendants' failure to pay overtime to Plaintiffs and the Non-Exempt Class
26 and as a matter of policy and practice, Defendants also failed to timely pay Plaintiffs and the Non-
27 Exempt Class all due wages. On information and belief, Defendants were advised by skilled lawyers
28 and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiffs'

1 allegations. Because Defendants willfully fail to timely pay Plaintiffs and the Non-Exempt Class all
2 overtime wages due, Defendants are subject to applicable penalties pursuant to Sections 201-204 and
3 210, among other Labor Code provisions.

4 52. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
5 entitles Plaintiffs and the Non-Exempt Class to recover underpaid overtime wages, including interest
6 thereon, applicable penalties, including waiting time penalties, attorneys' fees, and costs of suit.

7 **FIFTH CAUSE OF ACTION**

8 **Meal Period Violations (Lab. Code §§ 226.7, 512)**

9 **(By Plaintiffs and the Non-Exempt Class Against All Defendants)**

10 53. The preceding paragraphs are re-alleged and incorporated by this reference.

11 54. Because Plaintiffs and the Non-Exempt Class were non-exempt employees, Defendants
12 were required to comply with Sections 226.7 and 512 and the applicable IWC Wage Order. Section
13 512(a) generally prohibits employment of an individual for a work period of more than five hours per
14 day without providing the employee with an uninterrupted, duty-free meal period of at least 30 minutes.
15 Section 226.7(b) provides that an employer shall not require an employee to work during a meal period.
16 Section 226.7(c) states that "the employer shall pay the employee one additional hour of pay at the
17 employee's regular rate of compensation for each workday that the meal or rest or recovery period is
18 not provided."

19 55. As a matter of policy and practice on shifts exceeding five hours of work, Defendants
20 fail to provide Plaintiffs and the Non-Exempt Class with a duty-free 30-minute meal period within the
21 first five hours of work. As a matter of policy and practice, Plaintiffs and the Non-Exempt Class are
22 denied their opportunity to take timely, duty-free meal periods of at least 30 minutes. Instead, when
23 Plaintiffs and other non-exempt employees are allowed to take meal periods, the meal periods are not
24 provided until after the fifth hour of work. The meal periods also are often less than 30 minutes in
25 length or interrupted.

26 56. As a matter of policy and practice, Defendants also fail to pay Plaintiffs and the Non-
27 Exempt Class the requisite meal period premium pay of an additional hour of wages at the "regular rate
28 of pay." Defendants thus violate Sections 226.7 and 512 and the applicable IWC Wage Order. As such,

1 Plaintiffs and the Non-Exempt Class are owed meal period premium pay for meal periods Defendants
2 failed to provide and are owed unpaid wages for unpaid meal periods during which Plaintiffs and the
3 Non-Exempt Class remained on duty.

4 57. Based on Defendants' failure to pay meal period premium pay to Plaintiffs and the Non-
5 Exempt Class and as a matter of policy and practice, Defendants also fail to timely pay Plaintiffs and
6 the Non-Exempt Class all due wages. On information and belief, Defendants were advised by skilled
7 lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiffs'
8 allegations. Because Defendants willfully fail to timely pay Plaintiffs and the Non-Exempt Class all
9 wages due, Defendants are subject to applicable penalties pursuant to Sections 201-204 and 210, among
10 other Labor Code provisions.

11 58. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
12 entitles Plaintiffs and the Non-Exempt Class to recover unpaid meal period premium pay and unpaid
13 wages for on-duty hours worked, including interest thereon, applicable penalties, attorneys' fees, and
14 costs of suit.

15 SIXTH CAUSE OF ACTION

16 Rest Period Violations (Lab. Code § 226.7)

17 (By Plaintiffs and the Non-Exempt Class Against All Defendants)

18 59. The preceding paragraphs are re-alleged and incorporated by this reference.

19 60. Section 226.7 and the applicable IWC Wage Order generally require an employer to
20 provide a paid, duty-free, 10-minute rest period for every four hours worked, or major fraction thereof.
21 Section 226.7(b) provides that an employer shall not require an employee to work during a rest period.
22 Section 226.7(c) states that "the employer shall pay the employee one additional hour of pay at the
23 employee's regular rate of compensation for each workday that the meal or rest or recovery period is
24 not provided."

25 61. As a matter of policy and practice on shifts of at least 3.5 hours of work, Defendants fail
26 to permit off-duty rest periods to Plaintiffs and the Non-Exempt Class. Defendant's policy restricted
27 Plaintiffs and the other Non-Exempt Class from unconstrained walks and was unlawful based on
28 Defendant's rule which stated Plaintiffs and other Non-Exempt Class could not leave the work premises

1 during their rest period. As a result of Plaintiffs being required to be present on the premises they were
2 from time to time required by Defendant to work during what should have been her off duty rest period.
3 As a matter of policy and practice, Defendants also fail to pay an additional hour of pay at the regular
4 rate of compensation for each rest period missed by Plaintiffs and the Non-Exempt Class. Defendants
5 thus violate Section 226.7 and the applicable IWC Wage Order.

6 62. Based on Defendants' failure to pay rest period premium pay to Plaintiffs and the Non-
7 Exempt Class and as a matter of policy and practice, Defendants also fail to timely pay Plaintiffs and
8 the Non-Exempt Class all due wages. On information and belief, Defendants were advised by skilled
9 lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiffs'
10 allegations. Because Defendants willfully fail to timely pay Plaintiffs and the Non-Exempt Class all
11 wages due, Defendants are subject to applicable penalties pursuant to Sections 201-204 and 210, among
12 other Labor Code provisions.

13 63. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
14 entitles Plaintiffs and the Non-Exempt Class to recover unpaid rest period premium pay, including
15 interest thereon, applicable penalties, attorneys' fees, and costs of suit.

16 SEVENTH CAUSE OF ACTION

17 Inaccurate Itemized Wage Statements (Lab. Code § 226(a))

18 (By Plaintiffs and the Class Against All Defendants)

19 64. The preceding paragraphs are re-alleged and incorporated by this reference.

20 65. Section 226(a) requires an employer to furnish to its employees itemized wage
21 statements that show accurate information, including without limitation, all applicable hourly rates in
22 effect during the pay period, the corresponding number of hours worked at each hourly rate, gross
23 wages earned, and net wages earned.

24 66. As a matter of policy and practice, Defendants failed to provide accurate itemized wage
25 statements to Plaintiffs and the Class. Specifically, because of Defendants' overtime, sick pay, and meal
26 period violations, Defendants failed to furnish Plaintiffs and the Class with wage statements that
27 accurately showed all applicable hourly rates and corresponding total number of hours worked, the
28 gross wages earned, and the net wages earned, including all minimum wages, overtime wages, sick pay

1 wages, and premium pay earned for missed meal periods. The wage statements Defendant provided to
2 Plaintiffs and Class also failed to identify the rates of pay and number of hours worked for earnings
3 entries such as “Misc. Payment” and “Other” items of pay.

4 67. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
5 entitles Plaintiffs and the Class to recover applicable penalties, attorneys’ fees, and costs of suit.

6 **EIGHTH CAUSE OF ACTION**

7 **Unfair or Unlawful Business Practices (Bus. & Prof. Code §§ 17200 et seq.)**

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

9 68. The preceding paragraphs are re-alleged and incorporated by this reference.

10 69. Plaintiffs is informed and believes that at Defendants have engaged and continue to
11 engage in unfair and unlawful business practices in California by utilizing the employment policies and
12 practices alleged herein, including the failures to reimburse necessary and reasonable business expenses,
13 pay all wages due, including sick pay wages and overtime wages, or pay all premium wages for failures
14 to provide duty-free meal periods.

15 70. Defendants’ utilization of such unfair and unlawful business practices constitutes unfair
16 and unlawful competition and provides an unfair advantage over Defendants’ competitors, as proscribed
17 by the UCL. Defendants have deprived Plaintiffs and the Class the minimum working condition
18 standards and conditions due to them under the Labor Code and applicable IWC Wage Orders.

19 71. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
20 entitles Plaintiffs and the Class to full restitution of all monies withheld, acquired, or converted by
21 Defendants by means of the unfair practices complained of herein, including interest thereon, attorneys’
22 fees, and costs of suit.

23 **NINTH CAUSE OF ACTION**

24 **Violation of Labor Code (Lab. Code §§ 2698 et seq.)**

25 **(By Plaintiffs and Aggrieved Employees Against All Defendants)**

26 72. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
27 et seq. (“PAGA”), Plaintiffs bring this cause of action as proxies for the State of California. In this
28 capacity, Plaintiffs seek penalties for Defendants’ violations of Sections 201-204, 226, 226.7, 233, 246,

510, 512, 1182.12, 1197, 1198, and 2802 committed from March 23, 2020, through June 30, 2022, against all aggrieved employees. Under Section 2699(c), Plaintiffs are “aggrieved employees,” as one or more of the alleged violations was committed against Plaintiffs as employees of Defendants.

73. As stated herein, Defendants fail to reimburse necessary and reasonable business expenses, pay all minimum wages and overtime wages owed, pay all sick pay wages owed, provide duty-free meal and rest periods, and provide accurate itemized wage statements.

74. On or about February 18, 2021, and other dates, Plaintiffs sent written notice to the Labor & Workforce Development Agency (“LWDA”) of specific facts and theories for Defendants’ violations of Sections 201-204, 226, 226.7, 233, 246, 510, 512, 1182.12, 1197, 1198, and 2802. Plaintiffs simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations in the written notice.

75. As such, pursuant to Section 2699(a), (f), and (g), Plaintiffs seeks recovery of all applicable penalties for Defendants’ violations against all aggrieved employees for the period described above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for judgment for themselves and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiffs as the representative of the Class;
3. For an order appointing Counsel for Plaintiffs as Class Counsel;
4. Upon the First Cause of Action for damages, including interest thereon, and costs and attorneys’ fees;
5. Upon the Second Cause of Action for damages, including sick pay wages and interest thereon, penalties, and costs and attorneys’ fees;
6. Upon the Third Cause of Action for damages, including unpaid minimum wages and interest thereon, liquidated damages, and penalties, and for costs and attorneys’ fees;

1 7. Upon the Fourth Cause of Action for damages, including unpaid overtime and interest
2 thereon, penalties, and costs and attorneys' fees;

3 8. Upon the Fifth Cause of Action for damages, including unpaid meal period premium
4 pay, unpaid wages, and interest thereon, penalties, and costs and attorneys' fees;

5 9. Upon the Sixth Cause of Action for damages, including unpaid rest period premium pay,
6 and interest thereon, and penalties, and for costs and attorneys' fees;

7 10. Upon the Seventh Cause of Action for penalties, and for costs and attorneys' fees;

8 11. Upon the Eighth Cause of Action for restitution of all funds unlawfully acquired by
9 Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon,
10 and for costs and attorneys' fees;

11 12. Upon the Ninth Cause of Action for penalties pursuant to Section 2699(a), (f), and (g),
12 and for costs and attorneys' fees;

13 13. Upon each cause of action for attorneys' fees and costs as provided by Sections 218.5,
14 218.6, 226, 233, 248.5, and 2699, and Code of Civil Procedure section 1021.5; and

15 14. Upon each cause of action for attorneys' fees and costs as provided by Sections 218.5,
16 226, 248.5, 1194, 1198, 2699, and 2802, and Code of Civil Procedure section 1021.5; and

17 15. For such other and further relief that the Court may deem just and proper.

18 DATED: October 19, 2022

DIVERSITY LAW GROUP, P.C.

19 By: _____
20

Larry W. Lee

Simon L. Yang

21 Attorneys for Plaintiff Matthews

22 DATED: October 19, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE

23 BLOUW LLP

24 By: _____
25

Kyle R. Nordrehaug

26 Attorneys for Plaintiffs Smith, Alcala, and Knox
27
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STATE OF CALIFORNIA]
COUNTY OF LOS ANGELES]ss.

On November 10, 2022, I served the following document(s) described as: **SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action as follows:

PROOF OF SERVICE

1
2 X BY ELECTRONIC MAIL: by personally sending a true and correct copy
3 of the above-described document(s) to the party(ies) listed above or on the attached mailing list
4 from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)
5 indicated above or on the attached mailing list. I certify that said electronic transmission was
6 completed and that all pages were received by the party(ies) identified herein or on the attached
7 mailing list.

8 I declare under penalty of perjury under the laws of the State of California that the
9 above is true and correct. Executed on November 10, 2022, at Los Angeles, California.
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Erika Mejia