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 MARIA FERNANDA DIAZ TEJADA,
 and all putative class members

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

MARIA FERNANDA DIAZ TEJADA, an
 individual, on behalf of herself and all
 others similarly situated,

Plaintiffs,

vs.

ALVO HOLDING INC., a California
 Corporation and AV HOLDING INC., a
 California Corporation, and DOES 1-50,
 inclusive,

Defendants.

Case No.: **22STCV18671**

**CLASS ACTION COMPLAINT
 FOR:**

- 1. Failure to Pay for All Hours Worked, Including Overtime**
- 2. Failure to Timely Pay All Wages Owed**
- 3. Failure to Provide Rest Breaks**
- 4. Failure to Uninterrupted Meal Breaks**
- 5. Failure to Provide Accurate Itemized Wage Statements**
- 6. Unlawful Business Practices Bus & Prof. Code §17200**

JURY TRIAL DEMANDED

1 Plaintiff MARIA FERNANDA DIAZ TEJADA, individually, and on behalf of all
2 others similarly situated (collectively “Plaintiffs”), alleges as follows:

3 NATURE OF THE ACTION

4 1. This is an employment class action on behalf of over 100 hourly, non-exempt
5 employees against their employer for violations of numerous wage and hour laws. Plaintiffs
6 bring this employment class action complaint on behalf of themselves, and all others
7 similarly situated against ALVO HOLDING INC. and AV HOLDING INC., and DOES 1-
8 50, inclusive, (hereafter collectively “Defendant” or “Defendants”).

9 2. Defendants operate elder care facilities in Southern California where Plaintiff
10 worked for Defendants as a Direct Care employee from April of 2019 until January 2022.
11 Plaintiffs and the proposed class earn at or near minimum wage.

12 3. As described further below, Defendants have violated the California Labor Code
13 by (1) failing to pay for all hours worked, including overtime hours worked (§218, 432.5,
14 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199); (2) failing to timely pay all wages owed
15 (§201, 202); (3) failing to provide rest breaks (§226, 226.7, 512, 558, 1198); (4) failing to
16 provide uninterrupted meal breaks (§226, 226.7, 432.5, 512, 558, 1198); (5) failing to
17 provide accurate itemized wage statements (§226, 1174); and (6) unlawful and unfair
18 business practices (Bus. & Prof. Cod3 §17200, et. seq.).

19 4. The class claims in this action are brought pursuant to Code of Civil Procedure
20 (“CCP”) §382, seeking recovery for unpaid wages, including overtime wages, missed meal
21 and rest period penalty pay, statutory and waiting time penalties, injunctive and other
22 equitable relief, interest, and reasonable attorneys’ fees and costs. Pursuant to the class
23 action procedures provided for under California law, Plaintiff, on behalf of themselves and
24 proposed Class Members (also referred to as “Class”), also seeks injunctive relief and
25 restitution of all benefits Defendants have received from their unlawful actions as alleged
26 herein.

27 5. The “Class Period” is designated as the four-year period prior to the filing of this
28 Complaint through the date of final disposition of this action. From the start of the Class

1 Period through the present, Defendants have had a policy and/or practice of among other
2 violations: rounding employee time card entries, not providing uninterrupted meal periods
3 or rest breaks, issuing inaccurate wage statements, ignoring and violating California wage
4 and hour laws, and workplace safety laws, in their business as more fully set forth below.

5 6. Defendants have treated all persons employed in California in such a way as to
6 violate California's laws governing conditions of employment and payment of wages
7 owed. Plaintiffs assert that Defendants have knowingly and with conscious disregard of
8 the law refused to pay the Class Members all wages owed, including overtime wages and
9 meal and rest break penalty wages. Defendants have violated numerous Labor Code
10 provisions, as set forth herein. Class Members are owed their back pay, plus interest and/or
11 premiums and penalties under Business and Professions Code section 17203 to compensate
12 Class Members and Class Members for the delay in receiving wages due.

13 7. Defendants, by and through their actions, have engaged in unfair competition,
14 requiring restitution to persons affected and disgorgement of profits so obtained.

15 **THE PARTIES**

16 8. Plaintiff MARIA FERNANDA DIAZ TEJADA is an individual who resides in
17 California and worked for Defendant until January 2022.

18 9. Defendant ALVO HOLDING INC. is a California corporation, duly registered to
19 do business in California, with an address at 5055 Novgorod Street, Los Angeles, CA
20 90032, and exercised control over the wages, hours, and/or working conditions of Plaintiffs
21 and members of the proposed class throughout the liability period.

22 10. Defendant AV HOLDING INC. is a California corporation, duly registered to
23 do business in California, with an address at 4836 W. Washington Blvd., Los Angeles, CA
24 90016, and exercised control over the wages, hours, and/or working conditions of Plaintiffs
25 and members of the proposed class throughout the liability period.

26 11. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their
27 true names and capacities are unknown to Plaintiff. When their true names and capacities
28 are ascertained, Plaintiffs will amend this complaint by inserting their true names and

capacities herein. Plaintiffs are informed and believe, and thereon alleges, that each of the fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that the damages sustained by Plaintiffs and the Class Members herein alleged were proximately caused by such Doe Defendants.

12. Plaintiffs are informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiffs and other members of the Class, and exercised control over their wages, hours, and working conditions. Plaintiffs are informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

JURISDICTION AND VENUE

13. Venue is proper in this judicial district because Defendants conduct business in this County and Defendants have legal obligations to Plaintiffs and many of the Class Members in this case that arose in this county.

14. The monetary damages, restitution and statutory penalties sought by Plaintiffs exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation and analysis, Plaintiffs allege that the amount in controversy, including claims for monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,000).

15. The California Superior Court has jurisdiction in this matter because Plaintiffs are a resident of California and Defendants are incorporated in and/or qualified to do business in California and regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

GENERAL ALLEGATIONS

16. During the Class Period, Defendants committed various violations of the California Labor Code, the UCL and the applicable IWC Wage Order, as alleged below in

1 more detail. Defendants enforce multiple policies that violate state law which are intended
2 to increase its own profits to the detriment of its employees.

3 17. Plaintiffs and the putative class are employees of Defendants working in their
4 elder care facilities.

5 18. Plaintiffs were denied payment for all hour hours worked, including overtime
6 pay owed, resulting from Defendants' practices of failing to provide off-duty meal breaks,
7 failing to pay the lawful 1.5 or 2 times the regular rate of pay for overtime hours worked,
8 and rounding time from employee timecards.

9 19. Because Plaintiffs and employees are working at or near minimum wage,
10 Defendants' failure to pay for all hours worked, including for all overtime hours worked,
11 resulted in payment of less than the statutory minimum wage to employees.

12 20. Because Plaintiffs were not paid minimum wages, Defendant also failed to pay
13 all wages owed twice per month as required by Labor Code §204(a).

14 21. Regarding rest breaks, Defendants failed to maintain a policy and practice that
15 provides its employees with off-duty rest periods as required by California law. Plaintiffs
16 never received a rest break as required by Cal. Lab. Code §226.7, §512 and Wage Order 5-
17 2001 12(A). Rest breaks were not scheduled into daily shifts. Defendants failed to pay
18 Plaintiffs and similarly situated employees the premium compensation (one hour of pay at
19 the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor
20 Code §226.7 (b) for these missed rest periods.

21 22. Defendants prohibited its employees from taking uninterrupted 30-minute
22 minimum meal breaks during work hours. Labor Code §512 provides, "[a]n employer may
23 not employ an employee for a work period of more than five hours per day without
24 providing the employee with a meal period of not less than 30 minutes..." Labor Code
25 §226.7(a) provides, "[n]o employer shall require an employee to work during any meal...
26 period mandated by an applicable order of the Industrial Welfare Commission." Paragraph
27 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of
28 all duty during a 30-minute meal period, the meal period shall be considered an 'on duty'

meal period and counted as time worked.” Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code. Plaintiffs and aggrieved employees frequently worked straight through their shifts without a meal period or with a late meal period.

23. Defendant further failed to provide timely, accurate, itemized wage statements to Plaintiffs and the aggrieved employees, as well as maintain accurate records, in accordance with Labor Code §§ 226 and 1174.

24. Based upon the above allegations, Defendants engaged in unfair competition.

CALIFORNIA CLASS ACTION ALLEGATIONS

25. Plaintiffs bring this action on behalf of herself, and all other persons similarly situated, to recover from Defendants for failure to comply with California wage and hour laws, and for claims under Business and Professions Code § 17200.

26. This action has been brought and may properly be maintained as a class action pursuant to the provisions of Code of Civil Procedure § 382 because the proposed class is ascertainable and there is a well-defined community of interest. Plaintiffs are among in excess of 100 employees who have been similarly injured by Defendants’ unlawful employment policies and practices.

27. The “Relevant Time Period” or proposed “Class Period” as defined herein commences four years prior to the date of filing this Complaint.

28. Plaintiffs bring this action on their behalf and as a class action under Cal. Code of Civil Procedure §382 on behalf of the following defined groups:

29. Proposed Class: “All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations.”

30. Proposed Sub-classes:

A. All persons who are employed or have been employed by Defendants in the State of California as hourly, non-exempt workers during the period of the relevant statute of limitations, who worked one or more shift in excess of five (5) hours.

- 1 B. All persons who are employed or have been employed by Defendants in
2 the State of California as hourly, non-exempt workers during the period
3 of the relevant statute of limitations, who worked one or more shifts in
4 excess of six (6) hours.
- 5 C. All persons who are employed or have been employed by Defendants in
6 the State of California as hourly, non-exempt workers during the period
7 of the relevant statute of limitations, who worked one or more shifts in
8 excess of eight (8) hours.
- 9 D. All persons who are employed or have been employed by Defendants in
10 the State of California as hourly, non-exempt workers during the period
11 of the relevant statute of limitations, who worked one or more shifts in
12 excess of three and one-half hours (3 ½), but less than or equal to six (6)
13 hours.
- 14 E. All persons who are employed or have been employed by Defendants in
15 the State of California as hourly, non-exempt workers during the period
16 of the relevant statute of limitations, who worked one or more shifts in
17 excess of six (6) hours, but less than or equal to ten (10) hours.
- 18 F. All persons who are employed or have been employed by Defendants in
19 the State of California as hourly, non-exempt workers during the period
20 of the relevant statute of limitations, who separated their employment
21 from Defendants.
- 22 G. All persons who are employed or have been employed by Defendants in
23 the State of California as hourly, non-exempt workers during the period
24 of the relevant statute of limitations, who received pay for one or more
25 pay periods.
- 26 H. All persons who are employed or have been employed by Defendants in
27 the State of California as hourly, non-exempt workers during the period
28

1 of the relevant statute of limitations, who received wages without
2 accompanying California Sick Pay disclosures.

3 31. This action is brought, and may properly be maintained, as a class action under
4 CCP §382 because there is a well-defined community of interest in the litigation, and the
5 proposed Class and Subclasses (collectively “Class”) are easily ascertainable.

6 32. Numerosity: The Proposed Class is so numerous that joinder of all members is
7 impractical. Plaintiffs are informed and believes, and on that basis alleges, that during the
8 relevant time period, Defendants employed over 100 putative Class Members who are
9 geographically dispersed and who satisfy the definition of the proposed Class. As such, a
10 class action is the only available method for the fair and efficient adjudication of this
11 controversy. Membership in the Proposed Class can be easily ascertained by an
12 examination and analysis of employee and payroll records, among other records within
13 Defendants’ possession and control.

14 33. Typicality: Plaintiffs’ claims are typical of the claims of the Class Members.
15 Plaintiff, like others similarly situated, was subjected to Defendants’ common, unlawful
16 policies, practices, and procedures described above. The Plaintiffs’ positions at the
17 company was typical of those of other Class Members. Plaintiffs’ claims are typical of the
18 claims of each Class Member because each have sustained damages arising out of and
19 caused by Defendants’ common course of conduct, as alleged herein. As such, Plaintiffs
20 have the same interests in this matter as all members of the Class.

21 34. Adequacy: Plaintiff will fairly and adequately protect the interests of the
22 members of the Class. Plaintiffs have retained counsel competent and experienced in
23 complex class actions and California labor and employment litigation.

24 35. Commonality: Common questions of law and fact exist, including but not
25 limited to the following:

- 26 i. Whether Defendants violated wage and hour laws by rounding time
27 cards;
28

- ii. Whether Defendants violated wage and hour laws by failing to pay all wages owed upon separation;
- iii. Whether Defendants violated wage and hour laws by failing to provide all required rest periods;
- iv. Whether Defendants violated wage and hour laws by failing to provide all required, duty-free, 30-minute minimum meal periods;
- v. Whether Defendants' policy and practice concerning meal breaks was unlawful;
- vi. Whether Defendants' policy and practice concerning rest breaks was unlawful;
- vii. Whether Defendants unlawfully failed to keep and furnish Class Members with accurate, itemized records of hours worked, in violation of Labor Code §§ 226 and 1174;
- viii. Whether Defendants' policy and practice of failing to pay employees all wages owed twice per month violates Labor Code §204(a);
- ix. Whether Defendants' timekeeping practices resulted in payment of wages less than the statutory minimum wage;
- x. Whether Defendants' policy and practice of failing to pay its employees all wages due within the time required by law after their employment ended violates the law and warrants waiting time penalties under Cal. Labor Code §§ 200, 201, 202, 203, and 204;
- xi. The proper measure of damages sustained and the proper measure of restitution recoverable by Plaintiff, the Class Members, and Subclass Members;
- xii. Whether the Class Members are entitled to injunctive relief to enjoin any further violations of wage and labor laws;
- xiii. Whether Defendants, and each of them, are/were participants in the alleged unlawful and/or tortious conduct;

- 1 xiv. Whether Defendants' conduct was willful and reckless;
- 2 xv. The effect upon and the extent of injuries suffered by Plaintiff and the
- 3 Plaintiff Class and the appropriate amount of reimbursement,
- 4 restitution, damages, or other compensation; and
- 5 xvi. What is the extent of liability of each Defendant, including DOE
- 6 defendants, to each Class and Subclass member?

7 36. Superiority: A class action is superior to other available methods of the fair and

8 efficient adjudication of the controversy, particularly in the context of wage and hour

9 litigation where the damage suffered by individual plaintiffs, while not inconsequential,

10 makes individual actions impracticable given the expenses and burdens associated with

11 seeking individual relief. Prosecuting over 100 identical, individual lawsuits does not

12 promote judicial efficiency or equity and consistency in judicial results. Moreover, the

13 Class is a group of hourly, low-wage earning employees who rely on their wages and

14 requiring that each individual take time away from work to prosecute individual actions

15 would be inequitable and result in undue hardship for the individual Class members and

16 their families. Public policy favors efficient resolution of their claims and uniform

17 enforcement of California Labor laws against entities skirting their legal obligations at the

18 expense of a vulnerable working population.

19 37. Manageability: Plaintiffs are informed and believes that all allegations in this

20 Complaint are capable of being determined on the same evidence and based primarily on

21 review of corporate records and key testimony of Defendants' corporate representatives.

22 To the extent statistical analysis and representative evidence is necessary, Plaintiff and

23 proposed class counsel will employ competent experts and consultants in the field to

24 determine and review evidence for both issues of liability and damages in a scientifically

25 reliable manner.

26 38. Plaintiffs request

27 39. , pursuant to Rule 1857(a)(1) and Rule 3.766 of the California Rules of Court,

28 that the absent Class and Subclass Members be notified by the best notice practicable under

1 the circumstances, including individual notice to all members who can be identified
2 through reasonable effort. The names and address of the Class and Subclass Members are
3 available from Defendants.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY REQUIRED RATE OF PAY FOR ALL HOURS WORKED,**
6 **INCLUDING OVERTIME**

7 **Cal. Labor Code §§218, 432.5, 510, 512, 558, 1194, 1197,**
8 **1197.1, 1198, 1199**

9 **(All Plaintiffs Against All Defendants)**

10 40. Plaintiff incorporates by reference in this cause of action each allegation of the
11 preceding paragraphs as though fully set forth herein.

12 41. Section 2(K) or Wage Order 5 defines “hours worked” as “the time during which
13 an employee is subject to the control of an employer, and including all the time the
14 employee is suffered or permitted to work, whether or not required to do so.”

15 42. When employees like Plaintiff and aggrieved employees earning at or near
16 minimum wage do not receive payment for all hours worked because their unpaid meal
17 breaks are interrupted, the result is that they are earning less than the statutory minimum
18 wages for all hours worked. Defendants have been engaged in many unlawful employment
19 practices which resulted in underpayment for hours worked each pay period, including
20 overtime hours worked, as more fully set forth below:

21 43. Rounding Timecard Entries: Defendants failed to pay all hours worked as a
22 result of implementing a timecard rounding policy and procedure that favored the
23 employer. The California Supreme Court has rejected the *de minimis* argument frequently
24 echoed by employers, confirming that employees are entitled to payment for all hours (and
25 minutes) worked. Such pay must be paid timely pursuant to §204. (*Troester v. Starbucks*
26 *Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.)

27 44. Work Performed During Unpaid Meal Periods: As more fully set forth below,
28 Defendants failed to permit Plaintiff and aggrieved employees to take timely, off-duty,

1 meal breaks of “not less than 30 minutes” for each five consecutive hours of work in
2 violation of Labor Code §§226.7 and 512. Plaintiff’s unpaid meal periods were frequently
3 late and interrupted with work.

4 45. Failure to Pay Wages- Required Minimum Wage: Defendants failed to pay
5 Plaintiff and aggrieved employees for all hours worked as a result of Defendants’ practice
6 of requiring employees to work during mandated meal and rest periods and rounding
7 timecard entries.

8 46. Based on Defendants’ unlawful conduct described above, and because Plaintiff
9 and the aggrieved employees were paid at or near minimum wage, Defendants’ failure to
10 pay for all hours worked, including overtime, resulted in a payment of less than the
11 minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and
12 Wage Order 5-2001 4(B). Despite the unlawful timecard rounding, Defendant require
13 employees to sign timecards in violation of Labor Code 432.5. Defendants are liable for
14 civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

15 47. The California Supreme Court has rejected the *de minimis* argument frequently
16 echoed by employers, confirming that employees are entitled to payment for all hours (and
17 minutes) worked. (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing
18 *See’s Candy*, 210 Cal.App.4th at p. 907.)

19 48. Class Members are entitled to recover from Defendants unpaid wages, overtime,
20 plus interest thereon.

21 49. Labor Code § 1194 entitles an employee receiving less than the minimum wage
22 to recover in a civil action the unpaid balance of the full amount of this minimum wage,
23 including interest thereon, reasonable attorneys’ fees, and costs of suit.

24 50. Labor Code § 1194.2 entitles an employee receiving less than the minimum
25 wage to recover liquidated damages in an amount equal to the wages unlawfully unpaid
26 and interest thereon.

27 51. Labor Code §1197.1 subjects and employer who causes an employee to be paid
28 less than minimum wage to: (1) a civil penalty equal to one hundred dollars (\$100) for each

1 underpaid employee for each pay period in which the employee is underpaid for an initial
2 violation that is intentionally committed; (2) two hundred and fifty dollars (\$250) for a
3 subsequent violation for the same specific offense for each underpaid employee for each
4 pay period regardless of whether the initial violation is intentionally committed; (3)
5 restitution of wages; and (4) liquidated damages, all payable to the employee.

6 52. During the class period, Defendants have refused and failed to pay Plaintiff and
7 the Class for all hours worked. Consequently, Defendants have failed to pay minimum
8 wages to Plaintiff and the Class for all hours worked as alleged above in violation of
9 California Labor Code §§218, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the Wage Order.

10 53. As a result of Defendants' conduct, Plaintiff and Class Members have been
11 deprived of payment for all hours worked and minimum wage for all hours worked in an
12 amount to be determined at trial, and are entitled to recovery of the unpaid balance of the
13 full amount of these wage, including interest thereon, reasonable attorneys' fees, and costs
14 of suit pursuant to Labor Code §1194, 218.5, and Cal. Code of Civ. Pro. §1021.5; liquidated
15 damages and interest thereon pursuant to Labor Code §1194.2; and civil penalties,
16 restitution of wages, and liquidated damages pursuant to Labor Code §1197.1.

17 54. Plaintiffs allege on information and belief that Defendants' failure to pay the
18 Class Members for all hours worked as alleged in this cause of action, was willful, and thus
19 entitles the Class Members to penalties under Labor Code § 203. Specifically, Labor Code
20 § 203 provides that an employee's wages shall continue as a penalty until paid or for a
21 period of up to 30 days from the time they were due, whichever period is shorter.

22 55. In addition, and pursuant to Labor Code § 558, Plaintiff requests that this Court
23 award civil penalties as set forth in § 558 for each pay period during which Defendants
24 failed to pay the Class Members as alleged above.

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1 penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per
2 month.

3 60. Plaintiff will seek both restitution pursuant to Labor Code §558(a)(3) for herself
4 and members of the Class for each violation of Labor Code §203 during the Class Period,
5 in an amount according to proof based on Defendants' corporate and payroll records.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REST BREAKS**

8 **Cal. Labor Code §§218, 226, 226.7, 510, 512, 558, 1194, 1197, 1198, 1199**

9 **(All Plaintiffs Against All Defendants)**

10 61. Plaintiff incorporates by reference in this cause of action each allegation of the
11 preceding paragraphs as though fully set forth herein.

12 62. Defendants have failed to maintain a compliant rest period policy and practice
13 that provides its employees with off-duty rest periods as required by California law.

14 63. Defendants did not authorize or permit all of its hourly employees to take at
15 least a ten minute rest period in which they were relieved of all duties, for every 4 hours of
16 work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage
17 Order 5-2001 12(A). Plaintiff rarely received rest breaks and they were not incorporated
18 into daily schedules. When she did receive rest breaks, they were frequently interrupted.
19 She was expected to be available to patients regardless of whether she was on break.
20 Plaintiff observed this same policy and practice impacting her coworkers and putative class
21 members.

22 64. Defendants failed to pay Plaintiff and similarly situated employees all premium
23 compensation (one hour of pay at the employee's regular rate of pay for missed or untimely
24 rest periods) mandated by Labor Code §226.7 (b) for these missed and/or interrupted rest
25 periods. Because Defendants violated Section 12(A) of Wage Order 5, Defendants are
26 liable under Labor Code §1198. Further, as a derivative claim, Plaintiff also alleges that
27 her pay statements were inaccurate, failing to include required rest period penalties, thus
28

1 failing the requirements of Labor Code §226(a). As a result of these violations, Defendants
2 are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

3 65. Plaintiff also seeks injunctive relief requiring Defendants to comply with the
4 California Labor Code and Wage Orders with respect to rest periods, declaratory relief that
5 Defendants' policies regarding such are unlawful, and attorneys' fees and costs, and under
6 Cal. Code of Civ. Pro. §1021.5.

7 66. Defendants' failure to pay rest period premiums was done willfully, in bad faith,
8 in knowing violation of the California Labor Code and the IWC Wage Order.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE UNINTERRUPTED MEAL BREAKS**

11 **Cal. Labor Code §§226, 226.7, 432.5, 512, 558, 1198**

12 **(All Plaintiffs Against All Defendants)**

13 67. Plaintiff incorporates by reference in this cause of action each allegation of the
14 preceding paragraphs as though fully set forth herein.

15 68. During Plaintiffs' employment, Defendants failed to maintain a compliant meal
16 period policy and practice. Defendants failed to provide all of its hourly employees with
17 their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides,
18 "[a]n employer may not employ an employee for a work period of more than five hours
19 per day without providing the employee with a meal period of not less than 30 minutes..."
20 Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during
21 any meal... period mandated by an applicable order of the Industrial Welfare
22 Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless
23 an employee is relieved of all duty during a 30 minute meal period, the meal period shall
24 be considered an 'on duty' meal period and counted as time worked."

25 69. Section 11(D) of Wage Order 5 states:

26 Notwithstanding any other provision of this order, employees
27 in the health care industry who work shifts in excess of eight
28 (8) total hours in a workday may voluntarily waive their right

1 to one of their two meal periods. In order to be valid, any such
2 waiver must be documented in a written agreement that is
3 voluntarily signed by both the employee and the employer. The
4 employee may revoke the waiver at any time by providing the
5 employer at least one day's written notice. The employee shall
6 be fully compensated for all working time, including any on-
7 the-job meal period, while such a waiver is in effect.

8 70. Although Defendants had Plaintiff and her coworkers sign an on-duty meal
9 period waiver, as the language of the Wage Order states, it is only applicable to employees
10 "who work shifts in excess of eight (8) total hours." Most shifts were eight hours or fewer
11 and not "in excess of eight" hours so there is no excuse for the failure to provide meal
12 periods to Plaintiff and the putative class. This agreement violates Labor Code 432.5.

13 71. On many occasions, Plaintiff and class members were unable to take a compliant
14 meal period because meal periods were frequently interrupted.

15 72. Defendants failed to permit plaintiffs and others to take timely, off-duty, meal
16 breaks of "not less than 30 minutes" for each five consecutive hours of work in violation
17 of Labor Code §§226.7 and 512. Moreover, because Defendants' policy and practice
18 violates a Wage Order, Defendants are liable under Labor Code §1198. As a derivative
19 claim, Plaintiff alleges that pay statements were inaccurate, failing to include required meal
20 period penalties, thus failing the requirements of Labor Code §226(a).

21 73. Plaintiff seeks injunctive relief requiring Defendants to comply with the
22 California Labor Code and relevant Wage Orders with respect to meal periods, declaratory
23 relief that Defendants' policies regarding such are unlawful, and attorneys' fees and costs,
24 and under Cal. Code of Civ. Pro. §1021.5.

25 74. In addition, and pursuant to Labor Code § 558, Plaintiff requests that this Court
26 award civil penalties as set forth in § 558 for each pay period during which Defendants
27 failed to pay the Class Members as alleged above.
28

1 75. Defendants' failure to pay meal period premiums was done willfully, in bad
2 faith, in knowing violation of the California Labor Code and the IWC Wage Orders.

3 **FIFTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
5 **AGAINST ALL DEFENDANTS**

6 **Cal. Labor Code §§226, 1174**

7 **(All Plaintiffs Against All Defendants)**

8 76. Plaintiff incorporates by reference in this cause of action each allegation of the
9 preceding paragraphs as though fully set forth herein.

10 77. California Labor Code § 226(a) provides that, at the time of each payment of
11 wages, an employer shall provide each employee with a wage statement itemizing, among
12 other things, the total hours worked by the employee in the pay period, and all applicable
13 hourly rates in effect during the pay period, the corresponding number of hours worked at
14 each hourly rate by the employee, and the true legal name of the entity that is the employer.

15 78. California Labor Code § 226(e) provides that an employee suffering injury as a
16 result of a knowing and intentional failure by an employer to comply with Labor Code §
17 226(a) is entitled to recover the greater of his or her actual damages or a penalty of \$50 for
18 the initial pay period in which a violation occurs and \$100 per employee for each violation
19 in a subsequent pay period (up to a maximum of \$4,000), in addition to attorneys' fees and
20 costs.

21 79. Defendants knowingly and intentionally failed to provide timely, accurate,
22 itemized wage statements to Plaintiff and aggrieved employees in accordance with Labor
23 Code §§ 226 and 1174. The statements provided to Plaintiff and aggrieved employees have
24 not accurately reflected actual gross wages earned, including overtime and meal/rest
25 premiums, and total hour worked.

26 80. Such failures caused injury to Plaintiff and others, by, among other things,
27 impeding them from knowing the total hours worked and the amount of wages to which
28 they are and were entitled. Defendants knowingly and intentionally failed to itemize the

1 correct gross wages earned, net wages earned, and total hours worked. Employers issued
2 and maintained inaccurate wage statements and records. Defendants are liable for civil
3 penalties pursuant to Labor Code § 2699 *et seq.*

4 81. Labor Code § 1174 provides that “[e]very employer employing labor in this
5 state shall ... (c) [k]eep a record showing the names and addresses of all employees
6 employed and the ages of all minors [and] (d) [k]eep at a central location in the state or at
7 the plants or establishments at which employees are employed, payroll records showing the
8 hours worked daily by and the wages paid to, and the number of piece-rate units earned by
9 and any applicable piece rate paid to, employees employed at the respective plants or
10 establishments. These records shall be kept in accordance with rules established for this
11 purpose by the commission, but in any case shall be kept on file for not less than two years.”

12 82. Labor Code § 1174.5 provides that “[a]ny person employing labor who willfully
13 fails to maintain the records required by subdivision (c) of Section 1174 or accurate and
14 complete records maintained by subdivision (d) of Section 1174, or to allow any member
15 of the commission or employees of the division to inspect records pursuant to subdivision
16 (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

17 83. Plaintiffs allege on information and belief that Defendants knowingly and
18 intentionally failed to furnish the Class Members with accurate itemized statements for each
19 pay period that they worked and failed to maintain accurate payroll records of the Class
20 Members as mandated by Labor Code §§ 226 and 1174. As such, the Class Members are
21 entitled to civil penalties and an award of costs and attorney's fees under § 226(e). In
22 addition, the Class Members are entitled to recover civil penalties under § 1174.5.

23 **SIXTH CAUSE OF ACTION**

24 **UNFAIR PRACTICE UNDER THE UNFAIR COMPETITION ACT**

25 **California Business and Professions Code section 17200, et seq.**

26 **(All Plaintiffs Against All Defendants)**

27 84. Plaintiff incorporates by reference in this cause of action each allegation of the
28 preceding paragraphs as though fully set forth herein.

1 85. Defendants knowingly committed, and upon information and belief continue to
2 commit, ongoing unlawful business practices within the meaning of the UCL, including,
3 but not limited to unlawful practices as described in the causes of action articulated above,
4 and hereby incorporated herein.

5 86. Plaintiff lost money and property as a result of Defendants' unlawful business
6 practices described above.

7 87. Pursuant to the UCL, Plaintiff and all Class Members are entitled to restitution
8 of money or property acquired by Defendants by means of such unlawful business practices,
9 in amounts not yet known, but to be ascertained at trial.

10 88. Pursuant to the UCL, Plaintiff and Class Members are entitled to injunctive
11 relief against Defendants' ongoing unlawful business practices. If an injunction does not
12 issue enjoining Defendants from engaging in the unlawful business practices described
13 above, Plaintiff and the general public will be irreparably injured.

14 89. Plaintiffs have no plain, speedy, and adequate remedy at law. Defendants, if not
15 enjoined by this Court, will continue to engage in the unlawful business practices described
16 above in violation of the UCL, in derogation of the rights of Plaintiff and Class Members
17 and of the general public.

18 90. Plaintiffs' success in this action will result in the enforcement of important
19 rights affecting the public interest by conferring a significant benefit upon the general
20 public.

21 91. Defendants' numerous violations of local and California law, as well as the
22 other statutory and regulatory violations alleged herein, constitute unlawful business actions
23 and practices in violation of Business and Professions Code § 17200, et seq.

24 92. Pursuant to Business and Professions Code § 17200, et seq., Plaintiff and the
25 Class Members are entitled to restitution of unpaid wages and penalty pay, among other
26 relief alleged herein, that were withheld and retained by Defendants during a period that
27 commences four years prior to the filing of this action. Plaintiffs are further entitled to a
28 permanent injunction requiring Defendants to comply with all provisions of California labor

1 law, including properly paying the lawful rate of pay for all hours worked, providing
2 meal/rest periods to all workers as defined herein, timely pay wages upon discharge,
3 maintain accurate wages statements and payroll records, in addition to an award of
4 attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5 and other applicable
5 law, and costs.

6 REQUEST FOR RELIEF

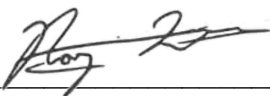
7 WHEREFORE, Plaintiff, on behalf of herself and the Proposed Class, request
8 judgment and the following specific relief against Defendants as follows:

- 9 A. That the Court determine that this action may be maintained as a class
10 action under Code of Civil Procedure § 382;
- 11 B. Provision of class notice to all members of the Class;
- 12 C. That Defendant is found to have violated the above-referenced provisions
13 of the Labor Code, CCR and IWC Wage Order 5-2001 as to Plaintiff,
14 Class Members and relevant subclass Members;
- 15 D. For compensatory damages, in an amount according to proof at trial, with
16 interest thereon;
- 17 E. For compensation for not being provided paid rest breaks;
- 18 F. For compensation for not being provided meal periods;
- 19 G. That Defendants' actions are found to be willful and/or in bad faith to the
20 extent necessary under §§ 201, 202, 203, and 558 of the California Labor
21 Code for willful failure to pay all compensation owed at the time of
22 separation to Plaintiff and Class Members no longer employed by
23 Defendants;
- 24 H. That Plaintiff and Class Members receive penalties for Defendants'
25 violation of §226 and 1174 of the California Labor Code for willful
26 failure to provide and maintain the required accurate and itemized wage
27 statements;
- 28

- 1 I. That Plaintiff and Class Members receive an award in the amount of
2 unpaid wages owed, including interest thereon, and penalties as provided
3 in the Labor Code, CCR and Wage Order, including under Labor Code
4 §§ 203, 510, and 558, subject to proof at trial;
- 5 J. That Plaintiff and Class Members receive damages pursuant to §§248.5
6 in addition to reasonable attorneys' fees, and costs of suit pursuant to
7 Labor Code § 218.5 and CCP 1021.5;
- 8 K. That Defendants be ordered to pay restitution to Plaintiff and Class
9 Members for amounts acquired through Defendants' unlawful activities
10 pursuant to Business and Professions Code §§ 17200-05 and enjoined to
11 cease and desist from unlawful and unfair activities in violation of
12 California Business and Professions Code § 17200 et. seq.;
- 13 L. That Plaintiff and Class Members receive an award of reasonable
14 attorneys' fees and costs pursuant to Code of Civil Procedure §1021.5,
15 Labor Code §226, 218.5, and 1194 and/or applicable laws;
- 16 M. That the Court issue declaratory relief that Defendants' challenged
17 policies are unlawful; and
- 18 N. That the Court order further relief, in law and equity, as it deems
19 appropriate and just.

20
21 DATED: April 26, 2022

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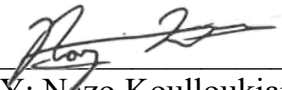
23 BY: Nazo Koulloukian, Esq.
24 Attorneys for Plaintiff MARIA
25 FERNANDA DIAZ TEJADA and
26 putative class members
27
28

1 ***DEMAND FOR JURY TRIAL***

2
3 Plaintiff, on behalf of herself and the putative class, hereby demands trial by jury to
4 the full extent permitted by law.

5
6
7 DATED: April 26, 2022

KOULLAW

8 
9 _____
10 BY: Nazo Koulloukian, Esq.
11 Attorneys for Plaintiff MARIA
12 FERNANDA DIAZ TEJADA and
13 putative class members
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