

James R. Hawkins (SBN 192925)
Christina M. Lucio (SBN 253677)
Nicholas W. Schieffelin (SBN 302329)
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676
James@Jameshawkinsaplc.com
Christina@Jameshawkinsaplc.com
Nick@Jameshawkinsaplc.com

Attorneys for Plaintiffs Sovatana Saut and John Hisato Nakatani,
on behalf of themselves and all others similarly situated

FILED
Superior Court of California
County of Los Angeles
08/29/2024

David W. Slayton, Executive Officer / Clerk of Court

By: R. Alva Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

SOVATANA SAUT and JOHN HISATO
NAKATANI, individually and on behalf
of themselves and all others similarly
situated,

Plaintiffs,

v.

MCKESSON CORPORATION, a
Delaware Corporation, and DOES 1-50,
inclusive,

Defendants.

Case No. 22STCV28690

FIRST AMENDED COMPLAINT

Assigned for All Purposes To:
Hon. Maureen Duffy-Lewis
Dept.: 038

COMPLAINT FOR DAMAGES FOR:

- 1) **Failure to Pay Minimum Wages;**
- 2) **Failure to Pay Overtime Owed;**
- 3) **Failure to Provide Lawful Meal Periods;**
- 4) **Failure To Authorize And Permit Rest Periods;**
- 5) **Failure to Timely Pay Wages During Employment;**
- 6) **Failure to Timely Pay Wages Owed Upon Separation From Employment;**
- 7) **Failure to Reimburse Necessary Expenses;**
- 8) **Knowing and Intentional Failure to Comply with Itemized Wage Statement Provisions;**
- 9) **Violation of the Unfair Competition Law;**

10) **Civil Penalties Pursuant to Private Attorneys' General Act, Labor Code section 2698 *et seq.***

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiffs SOVATANA SAUT and JOHN HISATO NAKATANI ("Plaintiffs"), individually and on behalf of others similarly situated, and asserts claims against Defendants MCKESSON CORPORATION, a Delaware Corporation; and DOES 1-50, inclusive (collectively "Defendant" or "McKesson Corporation") as follows:

INTRODUCTION

1. This is a class and representative action on behalf of Plaintiffs and any and all persons who are or were employed by Defendant as hourly-paid, non-exempt employees who worked in distribution centers in the State of California at any time from June 27, 2018 through April 7, 2024. ("Class Members" or "Non-Exempt Employees".)

2. Defendants implemented uniform policies and practices that deprived Plaintiffs and Class Members of earned wages, including minimum wages; straight time wages; overtime wages; premium wages; lawful meal and/or rest breaks; reimbursement for necessary expenses; and timely payment of wages.

3. Such actions and policies, as described above and further herein, were and continue to be in violation of the California Labor Code. Plaintiffs, on behalf of themselves and all Class Members, bring this action pursuant to the California Labor Code, including sections 201, 202, 203, 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 227.3, 245-249, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197, 1198, 2802, applicable IWC California Wage Orders and California Code of Regulations, Title 8, section 11000 *et seq.*, seeking unpaid wages, unpaid meal and rest period compensation, unreimbursed expenses, penalties, liquidated damages, and reasonable attorneys' fees and costs.

4. Plaintiffs, on behalf of themselves and others similarly situated, pursuant to Business and Professions Code sections 17200-17208, also seek restitution from Defendants for their failure to pay to Plaintiffs and Class Members all of their wages, including overtime and

1 premium wages.

2 5. Plaintiffs also bring this action pursuant to the PAGA on a representative basis on
3 behalf of all non-exempt employees working directly or indirectly for Defendant in the State of
4 California (the “Aggrieved Employees”) from one year prior to the filing of the PAGA notice to
5 the conclusion of this action. Plaintiffs bring this action on behalf of themselves and the Aggrieved
6 Employees to recover civil penalties and address Defendant’s violations of the California Labor
7 Code and the IWC Wage Orders.

8 6. Pursuant to *Huff v. Securitas Services*, 23 Cal. App. 5th 745, 751 (2018), an
9 employee who brings a representative action and was affected by at least one of the violations
10 alleged in the complaint has standing to pursue penalties on behalf of the state and not only for that
11 violation, but for violations affecting other employees as well. Accordingly, Mr. Saut and Mr.
12 Nakatani have standing to pursue penalties on behalf of the state of violations affecting all the
13 aggrieved employees working for Defendant, regardless of their classification, job title, or locations
14 in California.

15 7. In this case, Defendant violated various provisions of the California Labor Code and
16 IWC Wage Order. Defendant’s violations include: (1) failure to pay minimum wages; (2) failure
17 to provide lawful meal periods; (3) failure to authorize and permit rest periods; (4) failure to timely
18 pay wages during employment; (5) failure to timely pay wages owed upon separation from
19 employment; (6) failure to reimburse necessary expenses; (7) knowing and intentional failure to
20 comply with itemized wage statement provisions; (8) failure to keep accurate records; (9) failure to
21 properly pay sick leave; and (10) failure to pay overtime accurately.

22 8. The PAGA action is timely because Plaintiffs suffered from a violation or numerous
23 violations of the California Labor Code within one year of the date on which a PAGA notice was
24 sent to the LWDA via online submission. More than 65 days have passed, and no response has
25 been received by the LWDA.

26 **JURISDICTION AND VENUE**

27 9. This action is brought as a Class Action on behalf of Plaintiffs and similarly situated
28 employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The monetary

1 damages and restitution sought by Plaintiffs exceed the minimum jurisdiction limits of the
2 California Superior Court and will be established according to proof at trial.

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

7 11. This Court has jurisdiction over this Action pursuant to California Code of Civil
8 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

9 12. This Court has jurisdiction over Defendants because, upon information and belief,
10 each Defendant is either a resident of California, has sufficient minimum contacts in California, or
11 otherwise intentionally avails itself of the California market so as to render the exercise of
12 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
13 substantial justice. Defendants have done and are doing business throughout California and Los
14 Angeles County.

15 13. The unlawful acts alleged herein have a direct effect on Plaintiff Saut and other
16 similarly situated Non-Exempt Employees within Los Angeles County and it is believed that
17 Defendants have employed hundreds of Class Members as Non-Exempt Employees in Los Angeles
18 County, and throughout the State.

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

28 15. Venue is proper in this Court because one or more of the Defendants reside, transact

1 business, or have offices in this County, Plaintiff Saut is a resident of this County, and the acts or
2 omissions alleged herein took place in this County.

3 **PARTIES**

4 16. Defendant McKesson Corporation is a Delaware Corporation doing business in the
5 state of California. It is based at 6555 North State Highway 161 Irving, Texas 75039.

6 17. Upon information and belief, McKesson Corporation employs Non-Exempt
7 Employees, like Plaintiffs, throughout the State of California.

8 18. Plaintiff Sovatana Saut is and during the liability period has been, a resident of
9 California.

10 19. Plaintiff John Hisato Nakatani is and during the liability period has been, a resident
11 of California.

12 20. Plaintiffs were employed in hourly, non-exempt positions by Defendant during the
13 relevant time period.

14 21. Plaintiffs and the members of the putative class were employed as hourly paid
15 employees employed by Defendant, either directly or indirectly, in the State of California at any
16 time from June 27, 2018 through April 7, 2024.

17 22. Whenever in this complaint reference is made to any act, deed, or conduct of
18 Defendant, the allegation means that Defendant engaged in the act, deed, or conduct by or through
19 one or more of Defendant's officers, directors, agents, employees, or representatives, who was
20 actively engaged in the management, direction, control, or transaction of the ordinary business and
21 affairs of Defendant.

22 23. The true names and capacities of Defendant, whether individual, corporate,
23 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
24 Plaintiffs, who therefore sue Defendant by such fictitious names under Code of Civil Procedure §
25 474. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
26 capacities of the Defendant designated hereinafter as DOES when such identities become known.

27 24. Plaintiffs are informed and believe, and thereon allege, that the Doe Defendants are
28 the partners, agents, or principals and co-conspirators of Defendant and of each other; that

1 Defendant and the Doe Defendants performed the acts and conduct herein alleged directly, aided
2 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits
3 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the
4 liability of the Defendant as alleged herein.

5 25. Plaintiffs are further informed and believes, and thereon allege, that at all times
6 material herein, each Defendant was completely dominated and controlled by its co-Defendants
7 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint
8 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed
9 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
10 Whenever and wherever reference is made to individuals who are not named as Defendants in this
11 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times
12 acted on behalf of Defendants named in this complaint within the scope of their respective
13 employments.

14 **FACTUAL ALLEGATIONS**

15 26. During the relevant time frame, Defendant compensated Plaintiffs and the Non-
16 Exempt Employees based upon an hourly wage.

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

21 28. During the relevant time, Plaintiff Saut was employed by Defendants in an hourly,
22 non-exempt position from approximately July 2005 through December 2021. Specifically, he was
23 employed in the position of material handler. He usually worked approximately 5 days per week
24 and 8 hours per day. He typically worked 40 plus hours per week.

25 29. During the relevant time period, Plaintiff Nakatani was employed by Defendants in
26 an hourly non-exempt position from September 2021 through December 2021. Specifically, he
27 was employed in the position of material handler or order picker. He typically worked 5 days per
28

1 week, and often 9.5 to 10 hours per day.

2 30. Plaintiffs are informed and believe, and thereon allege, that Defendants are and were
3 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
4 requirements of California's wage and employment laws.

5 31. All Class Members are similarly situated in that they are all subject to Defendants'
6 uniform policies and systemic practices as specified herein.

7 32. Plaintiffs and the Class Members were required to clock in at the beginning of their
8 shifts, clock out for lunch, in at the end of their lunch periods and out at the end of their shifts.

9 33. However, Plaintiffs and the Class Members were not paid for all hours worked
10 because employees were required to work off the clock and because Defendants unlawfully
11 rounded the hours worked by Plaintiffs and the Class Members such that they were not paid for all
12 hours worked.

13 34. By way of example only, Plaintiffs and the Class Members were required to stand
14 in line to clock in because a number of employees were required to use the time clock at the same
15 time for given shifts. Employees were required to be at their works stations by their scheduled
16 shifts and were required to report for work early in order to ensure that they were not late to their
17 work stations. Employee punch in start time were rounded up to their scheduled start times to the
18 detriment of the employees. This rounding was not neutral and led to systematic under-
19 compensation of employees both as a result of the rounding and standing in line.

20 35. Further, Plaintiffs and the Class Members were required to work off the clock for
21 Covid-19 screenings and other pre shift activities prior to clocking in. By way of example, Plaintiffs
22 and the Class Members were required to wait in line, and participate in daily temperature checks
23 and fill out Covid questionnaires prior to clocking in. Accordingly, Plaintiffs and the Class
24 Members were not properly paid for all hours worked.

25 36. By way of further example, Plaintiffs and the Class Members were required to
26 submit to security checks randomly. Such security checks were done while off the clock. As such,
27 Plaintiffs and the Class Members were not properly paid for all hours worked.

28 37. In addition, Plaintiffs and the Class Members frequently worked in excess of eight

(8) hours in day and/or over forty (40) hours in a workweek, but were not properly paid for such time at a rate of time and one-half the employee's regular rate of pay per hour.

38. Upon information and belief, Defendants failed to incorporate all forms of non-discretionary compensation into the regular rate, including differentials, contests/raffles, bonuses, gift cards, and incentives.

39. By way of example, Plaintiffs and Class Members were provided with gift cards as bonuses at various times during the year and such sums were not incorporated into the regular rate. In addition, such gift cards were not recorded or shown on wage statements.

40. By way of further example, Defendants provided gift cards and incentive points to incentivize Plaintiffs and Class Members to increase productivity, meet targets/benchmarks, and avoid mistakes. The incentive points were redeemed for gift cards and other items with cash value. This constitutes non-discretionary compensation that should be included in the regular rate. However, Plaintiffs alleges that such sums were not included in the regular rates paid to Plaintiffs and, upon information and belief, the Class Members.

41. Plaintiffs and the Class Members were regularly required to work shifts in excess of five hours without being provided a lawful meal period and, on occasion, over ten hours in a day without being provided a second lawful meal period as required by law.

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

43. On information and belief, Plaintiffs and Class Members did not waive their rights to a second meal period.

44. Further, random off the clock security checks were conducted approximately once a month after employees clocked out for meal breaks. Such security checks interrupted meal

1 periods and constitute a violation of the requirements of Labor Code section 512 and the Wage
2 Order.

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

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

11 47. In addition, during the relevant time frame, Plaintiffs and the Class Members were
12 systematically not authorized and permitted to take one net ten-minute paid, rest period for every
13 four hours worked or major fraction thereof, which is a violation of the Labor Code and IWC wage
14 order.

15 48. Defendants maintained and enforced scheduling practices, policies, and imposed
16 work demands that frequently required Plaintiffs and Class Members to forego their lawful, paid
17 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
18 requisite rest periods were not timely authorized and permitted.

19 49. Moreover, Plaintiffs and the Class Members were not permitted to leave the
20 premises during rest periods. Defendants' failure to relinquish control over employees during rest
21 periods constitutes a violation of the Labor Code.

22 50. In addition, Defendants failed to authorize and permit third rest periods as a matter
23 of policy and practice on shifts over ten hours.

24 51. Despite the above-mentioned rest period violations, Defendants did not compensate
25 Plaintiffs, and on information and belief, did not pay Class Members one additional hour of pay at
26 their regular rate as required by California law, including Labor Code section 226.7 and the
27 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
28 permitted.

1 52. Moreover, Plaintiffs and the Class Members were required to incur necessary
2 expenses in the discharge of their duties, but were not reimbursed for such costs.

3 53. By way of example only, Class Members were required to use cellular phones in the
4 discharge of their duties, including to download applications and to answer Covid-19 screening
5 questionnaires.

6 54. Defendants also failed to provide accurate, lawful itemized wage statements to
7 Plaintiffs and the Class Members in part because of the above specified violations. In addition,
8 Defendants failed to include the applicable rates and hours on pay stubs as required by law.
9 Defendants also omitted the period of earning on wage statements for certain incentives. All of
10 these omissions constitute violations of the law.

11 55. Defendants have also made it difficult to determine applicable rates of pay and
12 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-
13 exempt Employees, including Plaintiffs, during the liability period because they did not implement
14 and preserve a lawful record-keeping method to record all hours worked, and non-provided rest
15 and meal periods owed to employees as required for non-exempt employees by 29 U.S.C. section
16 211(c), California Labor Code section 226, and applicable California Wage Orders.

17 56. Plaintiffs are informed and believe, and thereon allege, that at all times herein
18 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
19 thereof for resignations without prior notice as the case may be) they had a duty to accurately
20 compensate Plaintiffs and Class Members for all wages owed including straight time, overtime,
21 meal and rest period premiums, and that Defendants had the financial ability to pay such
22 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
23 because of the above-specified violations.

24 57. Plaintiffs and the Class Members are covered by applicable California IWC Wage
25 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
26 section 11000 *et seq.*

CLASS ACTION ALLEGATIONS

58. Plaintiffs bring this action on their own behalf, as well as on behalf of each and every other person similarly situated, and thus, seeks class certification under California Code of Civil Procedure §382.

59. All claims alleged herein arise under California law for which Plaintiffs seeks relief as authorized by California law.

60. The proposed class is comprised of and defined as: **any and all persons who are or were employed by Defendant as hourly-paid, non-exempt employees who worked in distribution centers in the State of California at any time from June 27, 2018 through April 7, 2024. .**

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

a. All Class Members who were required to complete Covid-19 questionnaires while off the clock. (collectively **"Covid-19 Subclass"**);

b. All Class Members who were subjected to security checks while off the clock. (collectively **"Security Check Subclass"**);

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

d. All Class Members who had their hours worked rounded (collectively **"Rounding Subclass"**);

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

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

g. All Class Members who worked more than ten hours in a workday and were not provided with a timely, uninterrupted lawful second meal period of thirty (30) minutes, and

1 were not paid compensation of one hour premium wages at the employee's regular rate in lieu
2 thereof (hereinafter collectively referred to as the "**Second Meal Period Subclass**");

3 h. All Class Members who worked more than three and a half hours in a
4 workday and were not authorized and permitted to take a net 10-minute rest period for every four
5 (4) hours or major fraction thereof worked per day and were not paid compensation of one hour
6 premium wages at the employee's regular rate in lieu thereof (hereinafter collectively referred to
7 as the "**Rest Period Subclass**");

8 i. All Class Members who were not permitted to leave the premises during rest
9 periods. (collectively referred to as the "**On Premises Rest Period Subclass**");

10 j. All Class Members who worked over ten hours in a shift. (collectively
11 referred to as the "**Over 10 Subclass**");

12 k. All Class Members who were not reimbursed for all necessary expenditures
13 (collectively "**Indemnification Subclass**");

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

17 m. All Class Members who were not provided with accurate and complete
18 itemized wage statements (hereinafter collectively referred to as the "**Inaccurate Wage Statement**
19 **Subclass**");

20 n. All Class Members who were employed by Defendants and subject to
21 Defendant's Unfair Business Practices (hereinafter collectively referred to as the "**Unfair Business**
22 **Practices Subclass**").

23 62. Plaintiffs reserve the right, under Rule 3.765, California Rules of Court, to amend
24 or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate,
25 or if it should be deemed necessary by the Court or to further divide the Class Members into
26 additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the
27 Class Members or the Plaintiffs' Class includes the members of each of the Subclasses.

28 63. As set forth in further detail below, this action has been brought and may properly

1 be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure
2 because there is a well-defined community of interest in the litigation, and the proposed Class and
3 Subclasses are easily ascertainable through Defendants' records.

4 a. Numerosity: The members of the Class and Subclasses are so numerous that
5 joinder of all members of the Class and Subclasses would be unfeasible and impractical. The
6 membership of the entire Class and Subclasses is unknown to Plaintiffs at this time, however, the
7 Class is estimated to be hundreds of individuals. Accounting for employee turnover during the
8 relevant periods necessarily increases this number substantially. Plaintiffs allege Defendants'
9 employment records would provide information as to the number and location of all Class
10 Members. Joinder of all members of the proposed Class is not practicable.

11 b. The proposed class is easily ascertainable. The number and identity of the
12 class members are determinable from Defendants' payroll records and time records for each class
13 member.

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

- 17 1. Whether Defendant accurately paid Class Members for all hours worked;
- 18 2. Whether Defendant rounding practices were lawful;
- 19 3. Whether Defendant knew or should have known that Class Members were
20 required to perform work off the clock;
- 21 4. Whether Defendant required Class Members to participate in off-the-clock
22 Covid 19 questionnaires and screenings;
- 23 5. Whether Defendant accurately calculated and paid all Class Members
24 overtime premiums for the hours which Plaintiffs and Class Members
25 worked in excess of eight (8) hours per day and/or forty (40) hours per week;
- 26 6. Whether Defendant accurately paid employees double time for hours worked
27 in excess of 12 hours in one day or for work over 8 hours in a day on the
28 seventh day of work in a workweek;

6. Whether Defendant had a policy and practice of providing lawful, timely meal periods in accordance with Labor Code § 512, as well as the applicable Industrial Welfare Commission (“IWC”) wage order;
7. Whether Defendant had a policy and practice of complying with Labor Code section 226.7 and IWC Wage Order on each instance that a lawful, timely 30-minute uninterrupted meal period was not provided;
8. Whether Defendant failed to authorize and permit a lawful, net 10-minute rest period to the Class Members for every four (4) hours or major fraction thereof worked;
9. Whether Defendant required employees to remain on the premises during rest periods;
10. Whether Defendant had a policy and practice of complying with Labor Code section 226.7 and the IWC Wage Order on each instance that a lawful rest period was not provided;
11. Whether Defendant failed to timely pay all wages upon separation in accordance with Labor Code sections 201-202;
12. Whether Defendant failed to reimburse employees for necessary expenses in accordance with Labor Code section 2802;
13. Whether Defendant omitted required information from itemized wage statements;
14. Whether Defendant failed to maintain accurate records of Class Members' earned wages, work periods, meal periods and deductions;
15. Whether Defendant engaged in unfair competition in violation of section 17200 et seq. of the Business and Professions Code;
16. Whether Defendant’s conduct was willful and/or reckless;
17. Whether Defendant failed to provide accurate itemized wage statements in violation of Labor Code § 226; and

1 18. The appropriate amount of damages, restitution, and/or monetary penalties
2 resulting from Defendant's violations of California law.

3 d. Typicality: Plaintiffs are qualified to and will fairly and adequately protect
4 the interests of each member of the Class and Subclasses with whom they have a well-defined
5 community of interest. Plaintiffs' claims herein alleged are typical of those claims which could be
6 alleged by any member of the Class and/or Subclasses, and the relief sought is typical of the relief
7 which would be sought by each member of the Class and/or Subclasses in separate actions. All
8 members of the Class and/or Subclasses have been similarly harmed by Defendant's failure to
9 provide lawful meal and rest periods, failure to reimburse expenses, failure to provide accurate
10 wage statements, failure to timely pay wages at termination, failure to pay minimum wages,
11 rounding practices, and failure to accurately pay all wages earned including all owed premium and
12 overtime wages, all due to Defendant's policies and practices that affected each member of the
13 Class and/or Subclasses similarly. Further, Defendant benefited from the same type of unfair and/or
14 wrongful acts as to each member of the Class and/or Subclasses.

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

24 f. Superiority: The nature of this action makes the use of class action
25 adjudication superior to other methods. A class action will achieve economies of time, effort,
26 judicial resources, and expense, which would not be achieved with separate lawsuits. The
27 prosecution of separate actions by individual members of the Class and/or Subclasses would create
28 a risk of inconsistent and/or varying adjudications with respect to the individual members of the

1 Class and/or Subclasses, establishing incompatible standards of conduct for the Defendant, and
2 resulting in the impairment of the rights of the members of the Class and/or Subclasses and the
3 disposition of their interests through actions to which they were not parties. Thus, a class action is
4 superior to other available means for the fair and efficient adjudication of this controversy because
5 individual joinder of all Class Members is not practicable, and questions of law and fact common
6 to the Class predominate over any questions affecting only individual Class Members. Each
7 member of the Class has been damaged and is entitled to recovery by reason of Defendant's
8 unlawful policies and practices that affected each member of the Class and/or Subclasses similarly.
9 Class action treatment will allow those similarly situated persons to litigate their claims in the
10 manner that is most efficient and economical for both parties and the judicial system. Plaintiffs are
11 unaware of any difficulties that are likely to be encountered in the management of this action that
12 would preclude its maintenance as a class action.

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

22 **CLASS ACTION CLAIMS**

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PAY MINIMUM WAGES**

25 **(By Plaintiffs and the Class Against Defendants)**

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

28 65. Labor Code section 204 establishes the fundamental right of all employees in the

1 State of California to be paid wages, including minimum wage, straight time and overtime, in a
2 timely fashion for their work.

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

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

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

14 69. The applicable wage orders and California Labor Code sections 1197 and 1182.12
15 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by
16 state law.

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

21 71. During all relevant periods, the California Labor Code and wage orders required that
22 Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all
23 hours worked.

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

27 73. At all times relevant, Plaintiffs and Class Members consistently worked hours for
28 which they were not paid because Defendant frequently required Plaintiffs and the Class Members

1 to work off the clock, including without limitation for Covid-19 screenings and security checks,
2 and to wait in line to clock in.

3 74. Plaintiffs are informed and believe that Defendant were aware that Plaintiffs and the
4 Class Members were working off the clock and that they should have been paid for this time.

5 75. In addition, Defendant failed to pay at least minimum wage for all hours worked
6 because, upon information and belief, Defendant rounded hours worked against Plaintiff and the
7 Class Members' interests.

8 76. Defendant's policy and practice of not paying all minimum wages violates
9 California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the
10 applicable wage order 1-2001 and 9-2001.

11 77. Due to Defendant's violations of the California Labor Code and wage orders,
12 Plaintiffs and the Class Members are entitled to recover from Defendant their unpaid wages,
13 statutory penalties, reasonable attorneys' fees and costs in this action, and pre-judgment and post-
14 judgment interest, as well as liquidated damages.

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY OVERTIME OWED**

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

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

20 79. During all relevant periods, Defendants required Plaintiffs and the Class Members
21 to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours
22 per workweek.

23 80. During all relevant periods, both the California Labor Code sections 1194, 1197,
24 510, 1198, and the pertinent wage order 1-2001 and 9-2001 required that all work performed by an
25 employee in excess of eight (8) hours in any workday, on the seventh day of work in any workweek,
26 or in excess of forty (40) hours in any workweek be compensated at one and one-half (1.5) times
27 the employee's regular rate of pay. Any work in excess of twelve (12) hours in one (1) day is
28 required to be compensated at the rate of no less than twice the regular rate of pay for an employee.

1 In addition, any work in excess of eight (8) hours on any seventh (7th) day of a workweek is
2 required to be compensated at the rate of no less than twice the regular rate of pay of an employee.

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

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

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

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

18 85. As a result, Defendant failed to pay Plaintiffs and the Class Members earned
19 overtime wages and such employees suffered damages as a result.

20 86. In addition, upon information and belief, Defendant failed to incorporate all forms
21 of compensation, including without limitation bonuses, differentials, gift cards, and incentives, into
22 the regular rate for overtime purposes.

23 87. Defendant knew or should have known Plaintiffs and the Class Members were
24 undercompensated as a result of these practices.

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

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE LAWFUL MEAL PERIODS
(By Plaintiffs and the Class Against All Defendants)

89. Plaintiffs incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

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

91. From June 27, 2018 through April 7, 2024, Defendant failed to provide Plaintiffs and Class Members timely and uninterrupted first meal periods of not less than thirty (30) minutes within the first five hours of a shift.

92. As a consequence of Defendant's policies and practices, requirements, demands, coverage and staffing, Plaintiffs and the Class Members were often required to forego such meal periods, take shortened meal periods, and/or commence their meal periods into and beyond the sixth hour of their shifts.

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

94. Moreover, as a matter of policy and practice, upon information and belief, the Class Members were also not provided second meal periods on days when shifts exceeded ten hours (and twelve hours), nor were they provided premium wages in lieu of a second meal period. On information and belief, Plaintiffs and the Class Members did not lawfully waive their rights to a second meal period on shifts in excess of ten hours.

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

96. Pursuant to Labor Code § 226.7, Plaintiffs and Class Members are entitled to recover

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

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

FOURTH CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS

(By Plaintiffs and the Class Against All Defendants)

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

99. Pursuant to the IWC wage orders applicable to Plaintiffs' and Class Members' employment by Defendant, "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall be counted as hours worked, for which there shall be no deduction from wages."

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

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

102. Despite said requirements of the IWC wage orders applicable to Plaintiffs' and Class Members' employment with Defendant, Defendant failed and refused to authorize and permit Plaintiffs and Class Members to take lawful, net ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof. Such rest breaks, when provided, were frequently

1 untimely or less than net ten minutes because of the work requirements imposed by Defendant, and
2 frequent calls during rest periods.

3 103. Further, as a matter of policy and practice, Defendant did not authorize and permit
4 third rest periods on shifts over ten hours.

5 104. Defendant did not pay Plaintiffs one additional hour of pay at their regular rate of
6 pay for each day that a rest period violation occurred. On information and belief, the other members
7 of the Class endured similar violations as a result of Defendant's rest period policies and practices
8 and Defendant did not pay said Class Members premium pay as required by law.

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

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

20
21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING**
23 **EMPLOYMENT**

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

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

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

1 days of wages.

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

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

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

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

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO REIMBURSE NECESSARY EXPENSES**

16 **(By Plaintiffs and the Indemnification Subclass Against All Defendants)**

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

19 120. Labor Code § 2802 requires Defendant to indemnify Plaintiffs and Class Members
20 for necessary expenditures incurred in direct consequence of the discharge of his or her duties.

21 121. Plaintiff and the members of the Indemnification Class were required to incur
22 expenses in the performance of their assigned job duties, including for cellular phone usage and
23 applications.

24 122. Upon information and belief, the Defendant did not reimburse Plaintiff or the
25 Plaintiff's subclass for such expenses.

26 123. As a result of the unlawful acts of Defendant, Plaintiffs and the Plaintiffs' Subclass
27 Members have been deprived of un-reimbursed sums in amounts to be determined at trial, and are
28 entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and

costs, pursuant to Labor Code §2802.

EIGHTH CAUSE OF ACTION
KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT PROVISIONS
By Plaintiffs and Wage Statement Subclass Against Defendants

124. Plaintiffs repeats and incorporate herein by reference each and every allegation set forth above, as though fully set forth herein.

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

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

127. Labor Code section 1174 of the California also requires Defendant to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, its employees. On information and belief and based thereon, Defendant have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged in the preceding causes of action and

1 herein. Defendant's failure to comply with Labor Code section 1174 is unlawful pursuant to Labor
2 Code section 1175.

3 128. Defendant has failed to record many of the items delineated in applicable Industrial
4 Wage Orders and Labor Code section 226, and required under Labor Code section 1174, including
5 by virtue of the fact that each wage statement which failed to accurately compensate Plaintiffs and
6 Class Members for all hours worked and for missed and non-provided meal and rest periods, or
7 which failed to include compensation for all minimum wages earned or overtime hours worked,
8 was an inaccurate wage statement. In addition, the wage statements failed to state number of hours
9 worked and each hourly wage rate, as well as the dates during which certain sums (incentives) were
10 earned.

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

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

28 131. Moreover, upon information and belief, as a pattern and practice, in violation of

1 Labor Code section 226(a) and the IWC Wage Orders, Defendant did not and do not maintain
2 accurate records pertaining to the total hours worked for Defendant by the members of the Wage
3 Statement Class, including but not limited to, beginning and ending of each work period, meal
4 period and split shift interval, the total daily hours worked, and the total hours worked per pay
5 period and applicable rates of pay.

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

14 133. Pursuant to Labor Code section 226, and in light of Defendant's violations addressed
15 above, Plaintiffs and the Wage Statement Class Members are each entitled to recover up to a
16 maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

17 **NINTH CAUSE OF ACTION**

18 **VIOLATION OF THE UNFAIR COMPETITION LAW**

19 **By Plaintiffs and Class Against All Defendants**

20 134. Plaintiffs incorporate by reference and realleges each and every allegation contained
21 above, as though fully set forth herein.

22 135. Defendant's conduct, as alleged in this complaint, has been, and continues to be,
23 unfair, unlawful, and harmful to Plaintiffs and Class Members, Defendant's competitors, and the
24 general public. Plaintiffs also seek to enforce important rights affecting the public interest within
25 the meaning of the California Code of Civil Procedure § 1021.5.

26 136. Defendant's policies, activities, and actions as alleged herein are violations of
27 California law and constitute unlawful business acts and practices in violation of California
28 Business and Professions Code §§ 17200, *et seq.*

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

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

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

140. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiffs and the Class Members are entitled to restitution of the wages withheld and retained by Defendant from June 27, 2018 through April 7, 2024; an award of attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of costs.

TENTH CAUSE OF ACTION

PENALTIES UNDER THE PRIVATE ATTORNEYS' GENERAL ACT, LABOR CODE

SECTION 2698 *ET SEQ.*

By Plaintiffs and Class Against All Defendants

141. Plaintiffs incorporate by reference each and every paragraph above, and realleges each and every allegation contained above as though fully set forth herein.

142. On May 27, 2022, Plaintiff Saut gave written notice by online submission to the LWDA and by certified mail to Defendant of Defendant's violations of numerous provisions of the California Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were paid as required by statute. A copy of the letter sent to the LWDA with enclosure is attached hereto as **Exhibit A.**

1 143. On June 26, 2022, Plaintiff Nakatani gave written notice by online submission to
2 the LWDA and by certified mail to Defendant of Defendant's violations of numerous provisions of
3 the California Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were
4 paid as required by statute. A copy of the letter sent to the LWDA with enclosure is attached hereto
5 as **Exhibit B**.

6 144. On July 23, 2024, Plaintiff Nakatani submitted a supplemental notice by online
7 submission to the LWDA and by certified mail to Defendant of Defendant's violations of numerous
8 provisions of the California Labor Code and the IWC Wage Orders as alleged in this complaint.
9 All fees were paid as required by statute. A copy of the letter sent to the LWDA with enclosure is
10 attached hereto as **Exhibit C**.

11 145. Plaintiffs are "aggrieved employees" as defined in Labor Code Section 2699(A), as
12 she was employed by Defendant during the statutory period and suffered one or more of the Labor
13 Code violations set forth herein. They seek to recover of themselves and all other current and
14 former aggrieved employees of Defendant the civil penalties provided by PAGA, plus reasonable
15 attorneys' fees and costs.

16 146. 65 days have passed, and no response has been received from the LWDA.
17 Accordingly, the LWAD has permitted Plaintiffs to proceed in a representative capacity.

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

21 148. Pursuant to Labor Code section 2699(a) Plaintiffs seek to recover civil penalties for
22 which Defendant is liable due to numerous Labor Code violations as set forth in this Complaint.

23 149. Plaintiffs seeks to recover the PAGA civil penalties through a representative action
24 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
25 4th 969. Class certification of the PAGA claims is not required.

26 150. Pursuant to Labor Code section 2698 et seq. and 2699(a), Plaintiffs seek to recover
27 civil penalties for which Defendant is liable due to numerous Labor Code and Wage Order
28 violations as set forth in this Complaint.

1 151. Specifically, Plaintiffs, on behalf of themselves and the Aggrieved Employees, seek
2 penalties under Labor Code §2699, for, without limitation, the claims set forth herein, including:

- 3 a. Defendant's failure to comply with the requirement of Labor Code §1182.12,
4 1194, 1197, 1198, and Wage Orders to pay at least minimum wage for every
5 hour worked;
- 6 b. Defendant's failure to comply with the requirement of Labor Code §510, 1194,
7 1197, 1198, and Wage Orders to accurately pay all wages earned, including
8 overtime;
- 9 c. Defendant's failure to comply with the requirement of Labor Code §216 to pay
10 wages after demand was made;
- 11 d. Defendant's failure to comply with the requirement of Labor Code §§204 and
12 210 to pay, without condition and within the time set by the applicable article,
13 all wages, or parts thereof;
- 14 e. Defendant's failure to comply with the requirement of Labor Code §225.5 to
15 pay wages due;
- 16 f. Defendant's failure to comply with the requirement of Labor Code §§201 and
17 202 to pay wages due to former employees;
- 18 g. Defendant's failure to comply with the requirement of Labor Code §203 to pay
19 waiting time penalties to former employees;
- 20 h. Defendant's failure to comply with the requirement of Labor Code §226.7, 1198,
21 and IWC Wage Orders to authorize and permit ten (10) minute rest breaks;
- 22 i. Defendant's failure to comply with the requirement of Labor Code §§226.7,
23 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate
24 for each statutorily required rest break that was not lawfully authorized and
25 permitted;
- 26 j. Defendant's failure to comply with the requirement of Labor Code §226.7, 512,
27 1198, and IWC Wage Orders to provide timely, uninterrupted 30 minute off-
28 duty meal periods;

- 1 k. Defendant's failure to comply with the requirement of Labor Code §226.7, 1198,
2 and IWC Wage Orders to pay one hour of premium pay at the regular rate for
3 each lawful meal break that was not provided;
- 4 l. Defendant's failure to provide accurate compliant wage statements under Labor
5 Code section 226;
- 6 m. Defendant's failure to reimburse necessary expenses in violation of Labor Code
7 §2802;
- 8 n. Defendant's failure to pay sick leave at the proper rate in violation of Labor
9 Code §246;
- 10 o. Defendant's failure to maintain required records in violation of Labor Code
11 §226, 1174, and Wage Orders for the above-specified violations;
- 12 152. Plaintiffs seek civil penalties for Defendant's violation of Labor Code provisions for
13 which a civil penalty is specifically provided, including but not limited to the following:
- 14 p. Pursuant to Labor Code §210, for violations of Labor Code §204, Defendant is
15 subject to a civil penalty in the amount of one hundred dollars (\$100) for the
16 initial violation for each failure to pay each employee and two hundred (\$200)
17 per employee for violations in subsequent pay periods plus 25% of the amount
18 unlawfully withheld.
- 19 q. Pursuant to Labor Code §226.3, for violations of Labor Code §226 (a) Defendant
20 is subject to a civil penalty in the amount of two hundred and fifty dollars (\$250)
21 per aggrieved employee for the initial pay period where a violation occurs and
22 one thousand dollars (\$1,000) per aggrieved employee for violations in
23 subsequent pay periods.
- 24 r. Pursuant to Labor Code §558(a), "[a]ny employer or other person acting on
25 behalf of an employer who violated, or causes to be violated, a section of this
26 chapter or any provision regulating hours and days of work in any order of the
27 Industrial Welfare Commission," including Labor Code §§510 and 512, shall be
28 subject to a civil penalty, in addition to any other penalty provided by law, of

fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid and one hundred dollars (\$100) for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid.

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

t. Pursuant to Labor Code §1174.5, for violations of Labor Code §1174(d), Defendant is subject to a civil penalty of five hundred dollars (\$500).

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

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

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

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

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiffs be appointed as the representative of the Class;
3. That Plaintiffs be appointed as the representatives of the Subclasses; and
4. That counsel for Plaintiffs be appointed as counsel for the Class and Subclasses.

On the First Cause of Action

(Failure to pay minimum wages)

1. For the unpaid balance of the full amount of any minimum wages, and regular wages owed, as well as interest thereon,
2. Penalties according to statute,
3. Liquidated damages,
4. Reasonable attorneys’ fees, and costs of suit;
5. For interest and
6. For such other and further relief as the Court deems proper.

On the Second Cause of Action

(Failure to pay overtime)

1. For the unpaid balance of the full amount of any overtime wages owed, as well as interest thereon,
2. Penalties according to statute,
3. Liquidated damages,
4. Reasonable attorneys’ fees, and costs of suit;
5. For interest and
6. For such other and further relief as the Court deems proper.

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1 **On the Third Cause of Action**

2 (Failure to Provide Lawful Meal Periods)

- 3 1. For one (1) hour of premium pay for each day in which a required meal period was
4 not lawfully provided;
- 5 2. For reasonable attorneys' fees and costs pursuant to statute; and
- 6 3. For such other and further relief as the Court deems proper.

7 **On the Fourth Cause of Action**

8 (Failure to Authorize and Permit Lawful Rest Periods)

- 9 1. For one (1) hour of premium pay for each day in which a required rest period was
10 not lawfully authorized and permitted; and
- 11 2. For reasonable attorneys' fees and costs pursuant to statute; and
- 12 3. For such other and further relief as the Court deems proper.

13 **On the Fifth Cause of Action**

14 (Failure to Timely Pay Wages Due and Payable During Employment)

- 15 1. For unpaid wages;
- 16 2. For penalties pursuant to Labor Code § 210 and 25% of the amount of wages
17 unlawfully withheld;
- 18 3. For interest;
- 19 4. For reasonable attorneys' fees and costs pursuant to statute; and
- 20 5. For such other and further relief as the Court deems proper.

21 **On the Sixth Cause of Action**

22 (Failure to Timely Pay Wages At Separation)

- 23 6. For unpaid wages;
- 24 7. For penalties pursuant to Labor Code § 203;
- 25 8. For interest;
- 26 9. For reasonable attorneys' fees and costs pursuant to statute; and
- 27 10. For such other and further relief as the Court deems proper.

1 **On the Seventh Cause of Action**

2 **(Failure to Reimburse Necessary Expenses)**

- 3 1. For unreimbursed sums;
- 4 2. For reasonable attorneys' fees and costs pursuant to statute;
- 5 3. For interest; and
- 6 4. For such other and further relief as the Court deems proper.

7

8 **On the Eighth Cause of Action**

9 **(Failure to Provide Accurate Itemized Wage Statements)**

- 10 1. For statutory penalties, including penalties pursuant to Labor Code section 226;
- 11 2. For reasonable attorneys' fees and costs; and
- 12 3. For such other and further relief as the Court deems proper;

13 **On the Ninth Cause of Action**

14 **(Violation of the Unfair Competition Law)**

15 1. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of

16 sums to Plaintiffs and Class Members for the Defendants' past failure to pay minimum, overtime

17 and regular wages, for Defendants' past failure to reimburse necessary expenses, and for premium

18 wages for meal and rest periods that were not provided to Plaintiffs and Class Members from June

19 27, 2018 through April 7, 2024 in an amount according to proof;

20 2. For reasonable attorneys' fees that Plaintiffs and Class Members are entitled to

21 recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194, 1197,

22 1198 ;

23 3. For pre-judgment interest on any unpaid minimum, regular and overtime wages due

24 from the day that such amounts were due;

25 4. For costs of suit incurred herein that Plaintiffs and Class Members are entitled to

26 recover under the Labor Code; and

- 27 5. For such other and further relief as the Court deems proper.

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On the Tenth Cause of Action

(Penalties Under the Private Attorney Generals Act, Labor Code section 2698 et seq.)

1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq. for the violations specified above;
2. For penalties under Labor Code sections 210, 226.3, 1174.5, 1197.1, and 2699(a) and (f);
3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
4. For reasonable attorneys' fees, expenses, and costs under Labor Code §§1194, 226, 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and
5. For such other and further relief as the Court deems proper.

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Respectfully submitted,


JAMES HAWKINS, APLC
James R. Hawkins, Esq.
Christina M. Lucio, Esq.
Nicholas W. Schieffelin, Esq.

4892-9801-0578, v. 1

EXHIBIT A

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

May 27, 2022

Via Online Filing (LWDA) and Certified Mail (Employer)

California Labor and Workforce Development Agency
Attn: PAGA Administrator

McKesson Corporation
6555 North State Highway 161
Irving, Texas 75039
Certified Mail Receipt:

McKesson Corporation
6535 North State Highway 161
Irving, Texas 75039
Certified Mail Receipt:

McKesson Corporation
Agent for Service of Process:
Corporation Service Company Which Will Do Business in California as CSC- Lawyers
Incorporating Service
2710 Gateway Oaks Dr., Suite 150N
Sacramento, California 95833
Certified Mail Receipt:

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiff Sovatana Saut, on behalf of himself and all others similarly situated, hereby gives NOTICE of his Complaint pursuant to Labor Code Sections 2698, *et seq.* against Defendant McKesson Corporation, a Delaware Corporation, and DOES 1 through 50, inclusive. Plaintiff intends to commence an action against Defendants pursuant to Labor Code sections 2698 *et seq.* Plaintiff hereby gives written notice by online submission to the Labor and Workforce Development Agency, and by certified mail to Defendant McKesson Corporation, via its agent for service of process.

Plaintiff was employed by Defendants as an hourly, non-exempt employee in Los Angeles County. Plaintiff began his employment with Defendants on or about July 6, 2005 and continued such employment through December 2021.

The group of aggrieved employees that Plaintiff seeks to represent is a group of non-exempt employees working with Defendants during the relevant time period. (“Aggrieved Employees”) This notice is timely as it is provided within one year of the violations.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Plaintiff has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees working for Defendants regardless of their classification, job title, or whether they were hired directly or through a labor contractor or staffing agency.

Failure to Pay Minimum Wages, Including Overtime

Plaintiff alleges that Defendants violated Labor Code sections 510, 1194, 1198 and the IWC Wage Order by failing to pay all wages owed including overtime and minimum wages. The Wage Orders 1-2001 and 9-2001 and Labor Code sections 1194 and 1197 provide that an employee must be paid at least minimum wage for each hour worked and overtime as applicable. Labor Code section 510 and the Wage Orders provide that employees working for more than eight (8) hours in a day or forty (40) hours in a work week are entitled to overtime compensation at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a work week. An employee who works more than twelve (12) hours in a day or more than eight (8) hours on the seventh day in a workweek is entitled to overtime compensation at a rate of twice the regular rate of pay.

Plaintiff alleges that he and the aggrieved employees were frequently not paid minimum wages and earned overtime because they were required to work while off the clock before and after shifts, and during purported meal periods. Such time is compensable time. However, in violation of the law, Plaintiff and the aggrieved employees were not paid for such time.

By way of example only, Plaintiff and the Aggrieved Employees were required to stand in line to clock in because a number of employees were required to use the time clock at the same time for given shifts. Employees were required to be at their works stations by their scheduled shifts and were required to report for work early in order to ensure that they were not late. Employee punch in start time were rounded up to their scheduled start times to the detriment of the employees. This rounding was not neutral and led to systematic undercompensation of employees both as a result of the rounding and standing in line.

By way of further exempt, Defendants required employees to fill out a Covid-related questionnaires via remote application before reporting to the facility for work. Then, before entering the gates at the facility, Plaintiff and the Aggrieved Employees were required to have their temperatures taken. There was often a line to have temperatures taken. All such time was off the clock and should have been compensated.

Further, in terms of overtime, Defendants frequently failed to pay overtime hours at 1.5 times the regular rate as required by law because Defendants failed to incorporate all differentials, non-discretionary sums, bonuses, and incentives in the regular rate. By way of example and not limitation, Defendants maintained an incentive program by which employees earned incentives for meeting certain benchmarks and goals. For example, employees earned incentives by having no errors in a month. Further, Defendants regularly paid bonuses and incentives for performance and other compensation, but such sums were not factored into the regular rate.

Thus, employees were systematically undercompensated in violation of the Labor Code.

Failure to Authorize and Permit Rest Periods

Plaintiff alleges that Defendants failed to authorize and permit rest periods. This failure violated Labor Code §§ 226.7, 1198, and Section 12(A) of IWC Wage Order 1-2001 and 9-2001 which provides that employers shall authorize and permit employees to take a rest period of net ten (10) minutes for each four (4) hours, or major fraction thereof, worked. This action is further brought under Labor Code § 226.7(b) and Section 12(B) of Wage Order 4 and 7, which provides that if an employer fails to authorize and permit a lawful rest period, the employer shall pay the employee one hour of additional pay at the employee's regular rate of compensation for each workday that a rest period was not authorized and permitted. Plaintiff and the aggrieved employees were systematically not authorized and permitted to take legally compliant net ten (10) minute rest periods for every four hours worked or major fraction thereof, which is a violation of the Labor Code section 226.7, 1198, and IWC Wage Order. Employees were not authorized and permitted to take a net ten-minute rest period as required by law, in part because Defendants maintained and enforced scheduling practices, staffing practices, and imposed work demands and schedules that frequently required employees to forego their breaks or return before a net ten minutes of rest. To the extent any rest periods were taken they were not compliant because employees were essentially required to remain on duty by Defendants prohibition of Plaintiff and Aggrieved Employees to leave the premises during rest periods. Defendants violated the law by failing to compensate Plaintiff and the aggrieved employees with one additional hour of pay at their regular rate of compensation when lawful rest periods were not lawfully provided in violation of Labor Code §§ 226.7 and 512, 1198 and the applicable Industrial Welfare Commission Wage Orders.

Failure to Timely Pay Wages During Employment

Labor Code section 204 requires that all wages are due and payable twice in each calendar month. The wages required by Labor Code §§ 226.7, 510, 1194, and other sections became due and payable to Plaintiff and each aggrieved employee in each month that he or she was not provided with a meal period or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled. Defendants violated Labor Code § 204 by systematically refusing to pay wages due under the Labor Code.

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

- (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
- (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

Failure to Provide Accurate Itemized Employee Wage Statements

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

Defendants have failed to record many of the items delineated in applicable Industrial Wage Orders and Labor Code section 226, and required under Labor Code section 1174, including by virtue of the fact that each wage statement which failed to accurately compensate Plaintiff and Aggrieved Employees for all hours worked and for missed and non-provided meal and rest periods, or which failed to include compensation for all minimum wages earned or overtime hours worked, as described herein, was an inaccurate wage statement. In addition, Defendants failed to include all applicable hourly rates in effect during each pay period, including Plaintiff’s and Aggrieved Employees’ hourly and overtime rates of pay.

Failure to Keep Accurate Payroll Records

Plaintiff also contends that Defendants failed to keep accurate records as required by Wage Order 1-2001, Wage Order 9-2001, Labor Code 1174, and 1198. The IWC Wage Orders required in pertinent part: Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be records...(5) Total hours worked in the payroll period and applicable rate of pay...” Labor Code section 1174 also requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, its employees. On information and belief and based thereon, Defendants have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged herein, including without limitation, failing to keep records of all hours worked, failing to keep track of all wages earned at the proper rates.

Failure to Timely Pay All Wages Owed Upon Separation of Employment

Defendants have violated California Labor Code §§ 201 and 202 by willfully failing to pay all compensation due and owing to Plaintiff and all other similarly situated former employees at the time employment as required under California Labor Code §§ 201 and 202, including meal premium pay and overtime pay. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages due, including without limitation rest period premiums, sick pay, minimum wages and overtime at the proper rate, immediately upon discharge or within seventy-two (72) hours of voluntary separation of employment. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced.

Further, separate and apart from any derivative violation, employees were not paid their final wages on their date of termination or within 72 hours, as required by law, as a matter of Defendants' policy and practice.

Therefore, Defendants have violated California Labor Code §§201, 202, and 203, and Defendants are liable for civil penalties pursuant to Labor Code §§2698 *et seq.*

Failure to Reimburse Necessary Expenses

Labor Code section 2802 requires employers to reimburse employees for necessary expenses incurred. Defendants' also violated California Labor Code §2802 by failing to reimburse Plaintiff and Aggrieved Employees for necessary expenses for cellular phone expenses. Employees were required to download an application onto their personal cellular phones to answer Covid-related questions. Plaintiff and the Aggrieved Employees were not reimbursed for such expenses.

All Labor Codes and related allegations pertain to all entities or individuals named in the Complaint, even if not so specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

/s/ Christina M. Lucio

Christina M. Lucio, Esq.

EXHIBIT B

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

June 26, 2022

Via Online Filing (LWDA) and Certified Mail (Employer)

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

McKesson Corporation
6555 North State Highway 161
Irving, Texas 75039
Certified Mail Receipt:
7021 1970 0000 9061 0034

McKesson Corporation
6535 North State Highway 161
Irving, Texas 75039
Certified Mail Receipt:
7021 1970 0000 9061 0041

McKesson Corporation
Agent for Service of Process:
Corporation Service Company Which Will Do
Business in California as
CSC- Lawyers Incorporating Service
2710 Gateway Oaks Dr., Suite 150N
Sacramento, California 95833
Certified Mail Receipt:
7021 1970 0000 9061 0058

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 et seq.

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiff John Nakatani, on behalf of himself and all others similarly situated, hereby gives NOTICE of his Complaint pursuant to Labor Code Sections 2698, *et seq.* against Defendant McKesson Corporation, a Delaware Corporation, and DOES 1 through 50, inclusive. Plaintiff intends to commence an action against Defendants pursuant to Labor Code sections 2698 *et seq.* Plaintiff hereby gives written notice by online submission to the Labor and Workforce Development Agency, and by certified mail to Defendant McKesson Corporation, via its agent for service of process.

Plaintiff was employed by Defendants as an hourly, non-exempt employee in Sacramento County. Plaintiff Nakatani was employed by Defendants in an hourly non-exempt position from September 2021 through December 2021. Specifically, he was employed in the position of order picker. He typically worked 5 days per week, and often 9.5 to 10 hours per day.

The group of aggrieved employees that Plaintiff seeks to represent is a group of non-exempt employees working with Defendants during the relevant time period. (“Aggrieved Employees”) This notice is timely as it is provided within one year of the violations.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Plaintiff has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees working for Defendants regardless of their classification, job title, or whether they were hired directly or through a labor contractor or staffing agency.

Failure to Pay Minimum Wages, Including Overtime

Plaintiff alleges that Defendants violated Labor Code sections 510, 1194, 1198 and the IWC Wage Order by failing to pay all wages owed including overtime and minimum wages. The Wage Orders 1-2001 and 9-2001 and Labor Code sections 1194 and 1197 provide that an employee must be paid at least minimum wage for each hour worked and overtime as applicable. Labor Code section 510 and the Wage Orders provide that employees working for more than eight (8) hours in a day or forty (40) hours in a work week are entitled to overtime compensation at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a work week. An employee who works more than twelve (12) hours in a day or more than eight (8) hours on the seventh day in a workweek is entitled to overtime compensation at a rate of twice the regular rate of pay.

Plaintiff alleges that he and the aggrieved employees were frequently not paid minimum wages and earned overtime because they were required to work while off the clock before and after shifts, and during purported meal periods. Such time is compensable time. However, in violation of the law, Plaintiff and the aggrieved employees were not paid for such time.

By way of example only, Plaintiff and the Aggrieved Employees were required to stand in line to clock in because a number of employees were required to use the time clock at the same time for given shifts. Employees were required to be at their work stations by their scheduled shifts and were required to report for work early in order to ensure that they were not late. Employee punch in start time were rounded up to their scheduled start times to the detriment of the employees. This rounding was not neutral and led to systematic undercompensation of employees both as a result of the rounding and standing in line.

By way of further example, Defendants required employees to fill out Covid-related questionnaires and have their temperatures taken while off the clock. There was often a line to

have temperatures taken and/or take the screening. All such time was off the clock and should have been compensated.

As an additional example, random off the clock security checks were conducted approximately once a month after Aggrieved Employees clocked out for meal breaks. Such security checks interrupted meal periods and constitute a violation of the requirements of Labor Code section 512 and the Wage Order.

Further, in terms of overtime, Defendants frequently failed to pay overtime hours at 1.5 times the regular rate as required by law because Defendants failed to incorporate all differentials, non-discretionary sums, bonuses, and incentives in the regular rate. By way of example and not limitation, Defendants maintained an incentive program by which employees earned incentives for meeting certain benchmarks and goals. For example, employees earned incentives by having no errors in a month. Further, Defendants regularly paid bonuses and incentives for performance and other compensation, but such sums were not factored into the regular rate.

Thus, employees were systematically undercompensated in violation of the Labor Code.

Failure to Authorize and Permit Rest Periods

Plaintiff alleges that Defendants failed to authorize and permit rest periods. This failure violated Labor Code §§ 226.7, 1198, and Section 12(A) of IWC Wage Order 1-2001 and 9-2001 which provides that employers shall authorize and permit employees to take a rest period of net ten (10) minutes for each four (4) hours, or major fraction thereof, worked. This action is further brought under Labor Code § 226.7(b) and Section 12(B) of Wage Order 4 and 7, which provides that if an employer fails to authorize and permit a lawful rest period, the employer shall pay the employee one hour of additional pay at the employee's regular rate of compensation for each workday that a rest period was not authorized and permitted. Plaintiff and the aggrieved employees were systematically not authorized and permitted to take legally compliant net ten (10) minute rest periods for every four hours worked or major fraction thereof, which is a violation of the Labor Code section 226.7, 1198, and IWC Wage Order. Employees were not authorized and permitted to take a net ten-minute rest period as required by law, in part because Defendants maintained and enforced scheduling practices, staffing practices, and imposed work demands and schedules that frequently required employees to forego their breaks or return before a net ten minutes of rest. To the extent any rest periods were taken they were not compliant because employees were essentially required to remain on duty by Defendants prohibition of Plaintiff and Aggrieved Employees to leave the premises during rest periods. In addition, as a matter of policy and practice, Defendants failed to provide third rest periods to employees working over 10 hours. Defendants violated the law by failing to compensate Plaintiff and the aggrieved employees with one additional hour of pay at their regular rate of compensation when lawful rest periods were not lawfully provided in violation of Labor Code §§ 226.7 and 512, 1198 and the applicable Industrial Welfare Commission Wage Orders.

Failure to Timely Pay Wages During Employment

Labor Code section 204 requires that all wages are due and payable twice in each calendar month. The wages required by Labor Code §§226.7, 510, 1194, and other sections became due and payable to Plaintiff and each aggrieved employee in each month that he or she was not provided with a meal period or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled. Defendants violated Labor Code §204 by systematically refusing to pay wages due under the Labor Code.

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

- (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
- (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

Failure to Provide Accurate Itemized Employee Wage Statements

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

Defendants have failed to record many of the items delineated in applicable Industrial Wage Orders and Labor Code section 226, and required under Labor Code section 1174, including by virtue of the fact that each wage statement which failed to accurately compensate Plaintiff and Aggrieved Employees for all hours worked and for missed and non-provided meal and rest periods, or which failed to include compensation for all minimum wages earned or overtime hours worked, as described herein, was an inaccurate wage statement. In addition, Defendants failed to include all applicable hourly rates in effect during each pay period, including Plaintiff’s and Aggrieved Employees’ hourly and overtime rates of pay. Defendants also failed to indicate the number of hours worked at each rate and the pay period during which certain sums were earned.

Failure to Keep Accurate Payroll Records

Plaintiff also contends that Defendants failed to keep accurate records as required by Wage Order 1-2001, Wage Order 9-2001, Labor Code 1174, and 1198. The IWC Wage Orders required in pertinent part: Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be records...(5) Total hours worked in the payroll period and applicable rate of pay..." Labor Code section 1174 also requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, its employees. On information and belief and based thereon, Defendants have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged herein, including without limitation, failing to keep records of all hours worked, failing to keep track of all wages earned at the proper rates.

Failure to Timely Pay All Wages Owed Upon Separation of Employment

Defendants have violated California Labor Code §§ 201 and 202 by willfully failing to pay all compensation due and owing to Plaintiff and all other similarly situated former employees at the time employment as required under California Labor Code §§ 201 and 202, including meal premium pay and overtime pay. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages due, including without limitation rest period premiums, sick pay, minimum wages and overtime at the proper rate, immediately upon discharge or within seventy-two (72) hours of voluntary separation of employment. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced.

Further, separate and apart from any derivative violation, employees were not paid their final wages on their date of termination or within 72 hours, as required by law, as a matter of Defendants' policy and practice.

Therefore, Defendants have violated California Labor Code §§201, 202, and 203, and Defendants are liable for civil penalties pursuant to Labor Code §§2698 *et seq.*

Failure to Reimburse Necessary Expenses

Labor Code section 2802 requires employers to reimburse employees for necessary expenses incurred. Defendants' also violated California Labor Code §2802 by failing to reimburse Plaintiff and Aggrieved Employees for necessary expenses for cellular phone expenses. Employees were required to download an application onto their personal cellular phones to answer Covid-related questions. Plaintiff and the Aggrieved Employees were not reimbursed for such expenses.

Failure to Properly Pay Sick Leave

In addition to the violation specified above and in the attached Complaint, Plaintiff alleges that Defendants failed to pay sick leave pay to Plaintiff and the Aggrieved Employees at the proper rate. Labor Code 246(i) provides: An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified. Labor Code section 246(1) provides: “For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations: (1) Paid sick leave for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.” In this case, Plaintiff alleges that Defendant failed to pay sick leave at the proper rate because it failed to take all forms of compensation, including incentives, bonuses, shift differentials, and other wages into account in calculating the regular rate. This constitutes a violation of Labor Code.

All Labor Codes and related allegations pertain to all entities or individuals named in the Complaint, even if not so specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

/s/ Christina M. Lucio

Christina M. Lucio, Esq.

Enclosure: Class Action Complaint

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

Attorneys for Plaintiffs Sovatana Saut and John Hisato Nakatani,
on behalf of themselves and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SOVATANA SAUT and JOHN HISATO
NAKATANI, individually and on behalf
of themselves and all others similarly
situated,

Plaintiffs,

v.

MCKESSON CORPORATION, a
Delaware Corporation, and DOES 1-50,
inclusive,

Defendants.

Case No.

COMPLAINT

Assigned for All Purposes To:

Hon.

Dept.:

COMPLAINT FOR DAMAGES FOR:

- 1) **Failure to Pay Minimum Wages;**
- 2) **Failure to Pay Overtime Owed;**
- 3) **Failure to Provide Lawful Meal Periods;**
- 4) **Failure To Authorize And Permit Rest Periods;**
- 5) **Failure to Timely Pay Wages During Employment**
- 6) **Failure to Timely Pay Wages Owed Upon Separation From Employment;**
- 7) **Failure to Reimburse Necessary Expenses;**
- 8) **Knowing and Intentional Failure to Comply with Itemized Wage Statement Provisions;**
- 9) **Violation of the Unfair Competition Law;**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiffs SOVATANA SAUT and JOHN HISATO NAKATANI (“Plaintiffs”), individually and on behalf of others similarly situated, and asserts claims against Defendants MCKESSON CORPORATION, a Delaware Corporation; and DOES 1-50, inclusive (collectively “Defendants” or “McKesson Corporation”) as follows:

INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure section 382, on behalf of Plaintiffs and any and all persons who are or were employed by Defendants, either directly or indirectly, in the State of California at any time from four years prior to the filing of this Complaint through resolution or trial of the matter. (“Class Members” or “Non-Exempt Employees”).

2. Defendants implemented uniform policies and practices that deprived Plaintiffs and Class Members of earned wages, including minimum wages; straight time wages; overtime wages; premium wages; lawful meal and/or rest breaks; reimbursement for necessary expenses; and timely payment of wages.

3. Such actions and policies, as described above and further herein, were and continue to be in violation of the California Labor Code. Plaintiffs, on behalf of themselves and all Class Members, bring this action pursuant to the California Labor Code, including sections 201, 202, 203, 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 227.3, 245-249, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197, 1198, 2802, applicable IWC California Wage Orders and California Code of Regulations, Title 8, section 11000 *et seq.*, seeking unpaid wages, unpaid meal and rest period compensation, unreimbursed expenses, penalties, liquidated damages, and reasonable attorneys’ fees and costs.

4. Plaintiffs, on behalf of themselves and others similarly situated, pursuant to Business and Professions Code sections 17200-17208, also seek restitution from Defendants for their failure to pay to Plaintiffs and Class Members all of their wages, including overtime and premium wages.

JURISDICTION AND VENUE

5. This action is brought as a Class Action on behalf of Plaintiffs and similarly situated

1 employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The monetary
2 damages and restitution sought by Plaintiffs exceed the minimum jurisdiction limits of the
3 California Superior Court and will be established according to proof at trial.

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

8 7. This Court has jurisdiction over this Action pursuant to California Code of Civil
9 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

10 8. This Court has jurisdiction over Defendants because, upon information and belief,
11 each Defendant is either a resident of California, has sufficient minimum contacts in California, or
12 otherwise intentionally avails itself of the California market so as to render the exercise of
13 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
14 substantial justice. Defendants have done and are doing business throughout California and Los
15 Angeles County.

16 9. The unlawful acts alleged herein have a direct effect on Plaintiff Saut and other
17 similarly situated Non-Exempt Employees within Los Angeles County and it is believed that
18 Defendants have employed hundreds of Class Members as Non-Exempt Employees in Los Angeles
19 County, and throughout the State.

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

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

PARTIES

12. Defendant McKesson Corporation is a Delaware Corporation doing business in the state of California. It is based at 6555 North State Highway 161 Irving, Texas 75039.

13. Upon information and belief, McKesson Corporation employs Non-Exempt Employees, like Plaintiffs, throughout the State of California.

14. Plaintiff Sovatana Saut is and during the liability period has been, a resident of California.

15. Plaintiff John Hisato Nakatani is and during the liability period has been, a resident of California.

16. Plaintiffs were employed in hourly, non-exempt positions by Defendants during the relevant time period.

17. Plaintiffs and the members of the putative class were employed as hourly paid employees employed by Defendants, either directly or indirectly, in the State of California at any time from four years prior to the filing of this Complaint.

18. Whenever in this complaint reference is made to any act, deed, or conduct of Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through one or more of Defendants' officers, directors, agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of Defendants.

19. The true names and capacities of Defendants, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiffs, who therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

20. Plaintiffs are informed and believe, and thereon allege, that the Doe Defendants are

1 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
2 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
3 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits
4 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the
5 liability of the Defendants as alleged herein.

6 21. Plaintiffs are further informed and believe, and thereon allege, that at all times
7 material herein, each Defendant was completely dominated and controlled by its co-Defendants
8 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint
9 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed
10 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
11 Whenever and wherever reference is made to individuals who are not named as Defendants in this
12 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times
13 acted on behalf of Defendants named in this complaint within the scope of their respective
14 employments.

15 **FACTUAL ALLEGATIONS**

16 22. During the relevant time frame, Defendants compensated Plaintiffs and the Non-
17 Exempt Employees based upon an hourly wage.

18 23. Plaintiffs and the Class Members were, and at all times pertinent hereto, have been
19 non-exempt employees within the meaning of the California Labor Code, and the implementing
20 rules and regulations of the IWC California Wage Orders. They are subject to the protections of
21 the IWC Wage Orders and the Labor Code.

22 24. During the relevant time, Plaintiff Saut was employed by Defendants in an hourly,
23 non-exempt position from approximately July 2005 through November 2021. Specifically, he was
24 employed in the position of material handler. He usually worked approximately 5 days per week
25 and 8 hours per day. He typically worked 40 plus hours per week.

26 25. During the relevant time period, Plaintiff Nakatani was employed by Defendants in
27 an hourly non-exempt position from September 2021 through December 2021. Specifically, he
28 was employed in the position of order picker. He typically worked 5 days per week, and often 9.5

1 to 10 hours per day.

2 26. Plaintiffs are informed and believe, and thereon allege, that Defendants are and were
3 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
4 requirements of California's wage and employment laws.

5 27. All Class Members are similarly situated in that they are all subject to Defendants'
6 uniform policies and systemic practices as specified herein.

7 28. Plaintiffs and the Class Members were required to clock in at the beginning of
8 their shifts, clock out for lunch, in at the end of their lunch periods and out at the end of their
9 shifts.

10 29. However, Plaintiffs and the Class Members were not paid for all hours worked
11 because employees were required to work off the clock and because Defendants unlawfully
12 rounded the hours worked by Plaintiffs and the Class Members such that they were not paid for
13 all hours worked.

14 30. By way of example only, Plaintiffs and the Class Members were required to stand
15 in line to clock in because a number of employees were required to use the time clock at the same
16 time for given shifts. Employees were required to be at their works stations by their scheduled
17 shifts and were required to report for work early in order to ensure that they were not late to their
18 work stations. Employee punch in start time were rounded up to their scheduled start times to the
19 detriment of the employees. This rounding was not neutral and led to systematic
20 undercompensation of employees both as a result of the rounding and standing in line.

21 31. Further, Plaintiffs and the Class Members were required to work off the clock for
22 Covid screenings and other pre shift activities prior to clocking in. By way of example, Plaintiffs
23 and the Class Members were required to wait in line, and participate in daily temperature checks
24 and fill out Covid questionnaires prior to clocking in. Accordingly, Plaintiffs and the Class
25 Members were not properly paid for all hours worked.

26 32. By way of further example, Plaintiffs and the Class Members were required to
27 submit to security checks randomly. Such security checks were done while off the clock. As
28 such, Plaintiffs and the Class Members were not properly paid for all hours worked.

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

4 34. Upon information and belief, Defendants failed to incorporate all forms of non
5 discretionary compensation into the regular rate, including differentials, contests/raffles, bonuses,
6 gift cards, and incentives.

7 35. By way of example, Plaintiffs and Class Members were provided with gift cards
8 as bonuses at various times during the year and such sums were not incorporated into the regular
9 rate. In addition such gift cards were not recorded or shown on wage statements.

10 36. By way of further example, Defendants provided gift cards and incentive points to
11 incentivize Plaintiffs and Class Members to increase productivity, meet targets/benchmarks, and
12 avoid mistakes. The incentive points were redeemed for gift cards and other items with cash
13 value. This constitutes non-discretionary compensation that should be included in the regular
14 rate. However, Plaintiffs alleges that such sums were not included in the regular rates paid to
15 Plaintiffs and, upon information and belief, the Class Members.

16 37. Plaintiffs and the Class Members were regularly required to work shifts in excess
17 of five hours without being provided a lawful meal period and, on occasion, over ten hours in a
18 day without being provided a second lawful meal period as required by law.

19 38. Indeed, during the relevant time, as a consequence of Defendants' scheduling
20 practices, work demands, and Defendants' policies and practices, Defendants frequently failed to
21 provide Plaintiffs and the Class Members timely, legally complaint uninterrupted 30-minute meal
22 periods as required by law. Not only were Plaintiffs' and the Class Members' first meal breaks
23 frequently not provided, untimely or short, but also Plaintiffs and the Class Members were not
24 provided a second meal period when working shifts in excess of 10 hours and in excess of 12
25 hours as a matter of pattern and practice.

26 39. On information and belief, Plaintiffs and Class Members did not waive their rights
27 to a second meal period.

28 40. Further, random off the clock security checks were conducted approximately once

1 a month after employees clocked out for meal breaks. Such security checks interrupted meal
2 periods and constitute a violation of the requirements of Labor Code section 512 and the Wage
3 Order.

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

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

12 43. In addition, during the relevant time frame, Plaintiffs and the Class Members were
13 systematically not authorized and permitted to take one net ten-minute paid, rest period for every
14 four hours worked or major fraction thereof, which is a violation of the Labor Code and IWC
15 wage order.

16 44. Defendants maintained and enforced scheduling practices, policies, and imposed
17 work demands that frequently required Plaintiffs and Class Members to forego their lawful, paid
18 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
19 requisite rest periods were not timely authorized and permitted.

20 45. Moreover, Plaintiffs and the Class Members were not permitted to leave the
21 premises during rest periods. Defendants' failure to relinquish control over employees during rest
22 periods constitutes a violation of the Labor Code.

23 46. In addition, Defendants failed to authorize and permit third rest periods as a matter
24 of policy and practice on shifts over ten hours.

25 47. Despite the above-mentioned rest period violations, Defendants did not
26 compensate Plaintiffs, and on information and belief, did not pay Class Members one additional
27 hour of pay at their regular rate as required by California law, including Labor Code section 226.7
28 and the applicable IWC wage order, for each day on which lawful rest periods were not

1 authorized and permitted.

2 48. Moreover, Plaintiffs and the Class Members were required to incur necessary
3 expenses in the discharge of their duties, but were not reimbursed for such costs.

4 49. By way of example only, Class Members were required to use cellular phones in
5 the discharge of their duties, including to download applications and to answer Covid-19
6 screening questionnaires.

7 50. Defendants also failed to provide accurate, lawful itemized wage statements to
8 Plaintiffs and the Class Members in part because of the above specified violations. In addition,
9 Defendants failed to include the applicable rates and hours on pay stubs as required by law.
10 Defendants also omitted the period of earning on wage statements for certain incentives. All of
11 these omissions constitute violations of the law.

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

19 52. Plaintiffs are informed and believe, and thereon allege, that at all times herein
20 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
21 thereof for resignations without prior notice as the case may be) they had a duty to accurately
22 compensate Plaintiffs and Class Members for all wages owed including straight time, overtime,
23 meal and rest period premiums, and that Defendants had the financial ability to pay such
24 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
25 because of the above-specified violations.

26 53. Plaintiffs and the Class Members are covered by applicable California IWC Wage
27 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
28 section 11000 *et seq.*

1 **CLASS ACTION ALLEGATIONS**

2 54. Plaintiffs bring this action on their own behalf, as well as on behalf of each and
3 every other person similarly situated, and thus, seeks class certification under California Code of
4 Civil Procedure §382.

5 55. All claims alleged herein arise under California law for which Plaintiffs seeks relief
6 as authorized by California law.

7 56. The proposed class is comprised of and defined as: **all persons who are or were**
8 **employed by the Defendants as hourly paid, non-exempt employees in the State of California**
9 **at any time from four years prior to the filing of this action through resolution or trial of the**
10 **matter.** (hereinafter collectively referred to as the “Class” or “Class Members”).

11 57. Plaintiffs also seek to represent Subclasses included in the Plaintiffs’ Class, which
12 are composed of Class Members satisfying the following definitions:

13 a. All Class Members who were required to complete Covid-19 questionnaires
14 while off the clock. (collectively “**Covid-19 Subclass**”);

15 b. All Class Members who were subjected to security checks while off the
16 clock. (collectively “**Security Check Subclass**”);

17 c. All Class Members who were not paid at least minimum wage for all hours
18 worked (collectively “**Minimum Wage Subclass**”);

19 d. All Class Members who had their hours worked rounded (collectively
20 “**Rounding Subclass**”);

21 e. All Class Members who were not accurately paid overtime for hours worked
22 over eight in a day or over forty in a workweek (collectively “**Overtime Subclass**”);

23 f. All Class Members who worked more than five (5) hours in a workday and
24 were not provided with a timely, uninterrupted lawful meal period of net thirty (30) minutes, and
25 were not paid compensation of one hour premium wages at the employee’s regular rate in lieu
26 thereof (hereinafter collectively referred to as the “**First Meal Period Subclass**”);

27 g. All Class Members who worked more than ten hours in a workday and were
28 not provided with a timely, uninterrupted lawful second meal period of thirty (30) minutes, and

1 were not paid compensation of one hour premium wages at the employee's regular rate in lieu
2 thereof (hereinafter collectively referred to as the "**Second Meal Period Subclass**");

3 h. All Class Members who worked more than three and a half hours in a
4 workday and were not authorized and permitted to take a net 10-minute rest period for every four
5 (4) hours or major fraction thereof worked per day and were not paid compensation of one hour
6 premium wages at the employee's regular rate in lieu thereof (hereinafter collectively referred to
7 as the "**Rest Period Subclass**");

8 i. All Class Members who were not permitted to leave the premises during rest
9 periods. (collectively referred to as the "**On Premises Rest Period Subclass**");

10 j. All Class Members who worked over ten hours in a shift. (collectively
11 referred to as the "**Over 10 Subclass**");

12 k. All Class Members who were not reimbursed for all necessary expenditures
13 (collectively "**Indemnification Subclass**");

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

17 m. All Class Members who were not provided with accurate and complete
18 itemized wage statements (hereinafter collectively referred to as the "**Inaccurate Wage Statement**
19 **Subclass**");

20 n. All Class Members who were employed by Defendants and subject to
21 Defendant's Unfair Business Practices (hereinafter collectively referred to as the "**Unfair Business**
22 **Practices Subclass**").

23 58. Plaintiffs reserve the right, under Rule 3.765, California Rules of Court, to amend
24 or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate,
25 or if it should be deemed necessary by the Court or to further divide the Class Members into
26 additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the
27 Class Members or the Plaintiffs' Class includes the members of each of the Subclasses.

28 59. As set forth in further detail below, this action has been brought and may properly

1 be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure
2 because there is a well-defined community of interest in the litigation, and the proposed Class and
3 Subclasses are easily ascertainable through Defendants' records.

4 a. Numerosity: The members of the Class and Subclasses are so numerous that
5 joinder of all members of the Class and Subclasses would be unfeasible and impractical. The
6 membership of the entire Class and Subclasses is unknown to Plaintiffs at this time, however, the
7 Class is estimated to be hundreds of individuals. Accounting for employee turnover during the
8 relevant periods necessarily increases this number substantially. Plaintiffs allege Defendants'
9 employment records would provide information as to the number and location of all Class
10 Members. Joinder of all members of the proposed Class is not practicable.

11 b. The proposed class is easily ascertainable. The number and identity of the
12 class members are determinable from Defendants' payroll records and time records for each class
13 member.

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

- 17 1. Whether Defendants accurately paid Class Members for all hours worked;
- 18 2. Whether Defendants rounding practices were lawful;
- 19 3. Whether Defendants knew or should have known that Class Members were
20 required to perform work off the clock;
- 21 4. Whether Defendants required Class Members to participate in off-the-clock
22 Covid 19 questionnaires and screenings;
- 23 5. Whether Defendants accurately calculated and paid all Class Members
24 overtime premiums for the hours which Plaintiffs and Class Members
25 worked in excess of eight (8) hours per day and/or forty (40) hours per week;
- 26 6. Whether Defendants accurately paid employees double time for hours
27 worked in excess of 12 hours in one day or for work over 8 hours in a day
28 on the seventh day of work in a workweek;

6. Whether Defendants had a policy and practice of providing lawful, timely meal periods in accordance with Labor Code § 512, as well as the applicable Industrial Welfare Commission (“IWC”) wage order;
7. Whether Defendants had a policy and practice of complying with Labor Code section 226.7 and IWC Wage Order on each instance that a lawful, timely 30-minute uninterrupted meal period was not provided;
8. Whether Defendants failed to authorize and permit a lawful, net 10-minute rest period to the Class Members for every four (4) hours or major fraction thereof worked;
9. Whether Defendants required employees to remain on the premises during rest periods;
10. Whether Defendants had a policy and practice of complying with Labor Code section 226.7 and the IWC Wage Order on each instance that a lawful rest period was not provided;
11. Whether Defendants failed to timely pay all wages upon separation in accordance with Labor Code sections 201-202;
12. Whether Defendants failed to reimburse employees for necessary expenses in accordance with Labor Code section 2802;
13. Whether Defendants omitted required information from itemized wage statements;
14. Whether Defendants failed to maintain accurate records of Class Members' earned wages, work periods, meal periods and deductions;
15. Whether Defendants engaged in unfair competition in violation of section 17200 et seq. of the Business and Professions Code;
16. Whether Defendants' conduct was willful and/or reckless;
17. Whether Defendants failed to provide accurate itemized wage statements in violation of Labor Code § 226; and
18. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violations of California law.

1 d. Typicality: Plaintiffs are qualified to, and will fairly and adequately protect
2 the interests of each member of the Class and Subclasses with whom they have a well-defined
3 community of interest. Plaintiffs' claims herein alleged are typical of those claims which could be
4 alleged by any member of the Class and/or Subclasses, and the relief sought is typical of the relief
5 which would be sought by each member of the Class and/or Subclasses in separate actions. All
6 members of the Class and/or Subclasses have been similarly harmed by Defendants' failure to
7 provide lawful meal and rest periods, failure to reimburse expenses, failure to provide accurate
8 wage statements, failure to timely pay wages at termination, failure to pay minimum wages,
9 rounding practices, and failure to accurately pay all wages earned including all owed premium and
10 overtime wages, all due to Defendants' policies and practices that affected each member of the
11 Class and/or Subclasses similarly. Further, Defendants benefited from the same type of unfair
12 and/or wrongful acts as to each member of the Class and/or Subclasses.

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

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

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

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

20 **CLASS ACTION CLAIMS**

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY MINIMUM WAGES**

23 **(By Plaintiffs and the Class Against Defendants)**

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

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

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

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

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

12 65. The applicable wage orders and California Labor Code sections 1197 and 1182.12
13 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by
14 state law.

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

19 67. During all relevant periods, the California Labor Code and wage orders required that
20 Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all
21 hours worked.

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

25 69. At all times relevant, Plaintiffs and Class Members consistently worked hours for
26 which they were not paid because Defendants frequently required Plaintiffs and the Class Members
27 to work off the clock, including without limitation for Covid-19 screenings and security checks,
28 and to wait in line to clock in.

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

71. In addition, Defendants failed to pay at least minimum wage for all hours worked because, upon information and belief, Defendants rounded hours worked against Plaintiff and the Class Members' interests.

72. Defendant's policy and practice of not paying all minimum wages violates California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the applicable wage order 1-2001 and 9-2001.

73. Due to Defendants' violations of the California Labor Code and wage orders, Plaintiffs and the Class Members are entitled to recover from Defendant their unpaid wages, statutory penalties, reasonable attorneys' fees and costs in this action, and pre-judgment and post-judgment interest, as well as liquidated damages.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME OWED

(By Plaintiffs and the Class Against All Defendants)

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

75. During all relevant periods, Defendants required Plaintiffs and the Class Members to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours per workweek.

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

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

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

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

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

16 81. As a result, Defendants failed to pay Plaintiffs and the Class Members earned
17 overtime wages and such employees suffered damages as a result.

18 82. In addition, upon information and belief, Defendants failed to incorporate all forms
19 of compensation, including without limitation bonuses, differentials, gift cards, and incentives, into
20 the regular rate for overtime purposes.

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

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

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE LAWFUL MEAL PERIODS
(By Plaintiffs and the Class Against All Defendants)

85. Plaintiffs incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

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

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

88. As a consequence of Defendants' policies and practices, requirements, demands, coverage and staffing, Plaintiffs and the Class Members were often required to forego such meal periods, take shortened meal periods, and/or commence their meal periods into and beyond the sixth hour of their shifts.

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

90. Moreover, as a matter of policy and practice, upon information and belief, the Class members were also not provided second meal periods on days when shifts exceeded ten hours (and twelve hours), nor were they provided premium wages in lieu of a second meal period. On information and belief, Plaintiffs and the Class Members did not lawfully waive their rights to a second meal period on shifts in excess of ten hours.

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

92. Pursuant to Labor Code § 226.7, Plaintiffs and Class Members are entitled to recover one (1) hour of premium pay for each day in which a meal period violation occurred. They are also

1 entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

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

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS**

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

10 94. Plaintiffs incorporate by reference and realleges each and every allegation contained
11 above, as though fully set forth herein.

12 95. Pursuant to the IWC wage orders applicable to Plaintiffs' and Class Members'
13 employment by Defendants, "Every employer shall authorize and permit all employees to take rest
14 periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized
15 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
16 rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall
17 be counted as hours worked, for which there shall be no deduction from wages."

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

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

24 98. Despite said requirements of the IWC wage orders applicable to Plaintiffs' and Class
25 Members' employment with Defendants, Defendants failed and refused to authorize and permit
26 Plaintiffs and Class Members to take lawful, net ten (10) minute rest periods for every four (4)
27 hours worked, or major fraction thereof. Such rest breaks, when provided, were frequently
28

1 untimely or less than net ten minutes because of the work requirements imposed by Defendants,
2 and frequent calls during rest periods.

3 99. Further, as a matter of policy and practice, Defendants did not authorize and permit
4 third rest periods on shifts over ten hours.

5 100. Defendants did not pay Plaintiffs one additional hour of pay at their regular rate of
6 pay for each day that a rest period violation occurred. On information and belief, the other members
7 of the Class endured similar violations as a result of Defendants' rest period policies and practices
8 and Defendant did not pay said Class Members premium pay as required by law.

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

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

21 FIFTH CAUSE OF ACTION

22 **FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING** 23 **EMPLOYMENT**

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

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

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

1 days of wages.

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

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

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

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

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO REIMBURSE NECESSARY EXPENSES**

16 **(By Plaintiffs and the Indemnification Subclass Against All Defendants)**

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

19 116. Labor Code § 2802 requires Defendants to indemnify Plaintiffs and Class
20 Members for necessary expenditures incurred in direct consequence of the discharge of his or her
21 duties.

22 117. Plaintiff and the members of the Indemnification Class were required to incur
23 expenses in the performance of their assigned job duties, including for cellular phone usage and
24 applications.

25 118. Upon information and belief, the Defendants did not reimburse Plaintiff or the
26 Plaintiff's subclass for such expenses.

27 119. As a result of the unlawful acts of Defendants, Plaintiffs and the Plaintiffs'
28 Subclass Members have been deprived of un-reimbursed sums in amounts to be determined at

1 trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon,
2 attorneys' fees, and costs, pursuant to Labor Code §2802.

3 **EIGHTH CAUSE OF ACTION**

4 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**
5 **EMPLOYEE WAGE STATEMENT PROVISIONS**

6 **By Plaintiffs and Wage Statement Subclass Against Defendants**

7 120. Plaintiffs repeats and incorporate herein by reference each and every allegation set
8 forth above, as though fully set forth herein.

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

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

25 123. Labor Code section 1174 of the California also requires Defendants to maintain
26 and preserve, in a centralized location, among other items, records showing the names and
27 addresses of all employees employed and payroll records showing the hours worked daily by, and
28 the wages paid to, its employees. On information and belief and based thereon, Defendants have

1 knowingly and intentionally failed to comply with Labor Code section 1174, including by
2 implementing the policies and procedures and committing the violations alleged in the preceding
3 causes of action and herein. Defendants' failure to comply with Labor Code section 1174 is
4 unlawful pursuant to Labor Code section 1175.

5 124. Defendants have failed to record many of the items delineated in applicable
6 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
7 1174, including by virtue of the fact that each wage statement which failed to accurately
8 compensate Plaintiffs and Class Members for all hours worked and for missed and non-provided
9 meal and rest periods, or which failed to include compensation for all minimum wages earned or
10 overtime hours worked, was an inaccurate wage statement. In addition, the wage statements
11 failed to state number of hours worked and each hourly wage rate, as well as the dates during
12 which certain sums (incentives) were earned.

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

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

1 failure to pay meal and rest period premiums as required by law.

2 127. Moreover, upon information and belief, as a pattern and practice, in violation of
3 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
4 accurate records pertaining to the total hours worked for Defendants by the members of the Wage
5 Statement Class, including but not limited to, beginning and ending of each work period, meal
6 period and split shift interval, the total daily hours worked, and the total hours worked per pay
7 period and applicable rates of pay.

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

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

19 **NINTH CAUSE OF ACTION**

20 **VIOLATION OF THE UNFAIR COMPETITION LAW**

21 **By Plaintiffs and Class Against All Defendants**

22 130. Plaintiffs incorporate by reference and realleges each and every allegation contained
23 above, as though fully set forth herein.

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

28 132. Defendants' policies, activities, and actions as alleged herein are violations of

1 California law and constitute unlawful business acts and practices in violation of California
2 Business and Professions Code §§ 17200, *et seq.*

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

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

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

16 136. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiffs
17 and the Class Members are entitled to restitution of the wages withheld and retained by Defendants
18 during a period that commences four (4) years prior to the filing of this complaint; an award of
19 attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of
20 costs.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray judgment against Defendants, jointly and severally, as
23 follows:

24 **Class Certification**

- 25 1. That this action be certified as a class action;
- 26 2. That Plaintiffs be appointed as the representative of the Class;
- 27 3. That Plaintiffs be appointed as the representatives of the Subclasses; and
- 28 4. That counsel for Plaintiffs be appointed as counsel for the Class and Subclasses.

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On the First Cause of Action

(Failure to pay minimum wages)

1. For the unpaid balance of the full amount of any minimum wages, and regular wages owed, as well as interest thereon,
2. Penalties according to statute,
3. Liquidated damages,
4. Reasonable attorneys' fees, and costs of suit;
5. For interest and
6. For such other and further relief as the Court deems proper.

On the Second Cause of Action

(Failure to pay overtime)

1. For the unpaid balance of the full amount of any overtime wages owed, as well as interest thereon,
2. Penalties according to statute,
3. Liquidated damages,
4. Reasonable attorneys' fees, and costs of suit;
5. For interest and
6. For such other and further relief as the Court deems proper.

On the Third Cause of Action

(Failure to Provide Lawful Meal Periods)

1. For one (1) hour of premium pay for each day in which a required meal period was not lawfully provided;
2. For reasonable attorneys' fees and costs pursuant to statute; and
3. For such other and further relief as the Court deems proper.

On the Fourth Cause of Action

(Failure to Authorize and Permit Lawful Rest Periods)

1. For one (1) hour of premium pay for each day in which a required rest period was not lawfully authorized and permitted; and
2. For reasonable attorneys' fees and costs pursuant to statute; and
3. For such other and further relief as the Court deems proper.

On the Fifth Cause of Action

(Failure to Timely Pay Wages Due and Payable During Employment)

1. For unpaid wages;
2. For penalties pursuant to Labor Code § 210 and 25% of the amount of wages unlawfully withheld;
3. For interest;
4. For reasonable attorneys' fees and costs pursuant to statute; and
5. For such other and further relief as the Court deems proper.

On the Sixth Cause of Action

(Failure to Timely Pay Wages At Separation)

6. For unpaid wages;
7. For penalties pursuant to Labor Code § 203;
8. For interest;
9. For reasonable attorneys' fees and costs pursuant to statute; and
10. For such other and further relief as the Court deems proper.

On the Seventh Cause of Action

(Failure to Reimburse Necessary Expenses)

1. For unreimbursed sums;
2. For reasonable attorneys' fees and costs pursuant to statute;
3. For interest; and
4. For such other and further relief as the Court deems proper.

On the Eighth Cause of Action

(Failure to Provide Accurate Itemized Wage Statements)

EXHIBIT C

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

July 23, 2024

Via Online Filing (LWDA) and Certified Mail (Employer)

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

McKesson Corporation
6555 North State Highway 161
Irving, Texas 75039
Certified Mail Receipt:
Receipt No.: 9589 0710 5270 0748 0722 05

McKesson Corporation
6535 North State Highway 161
Irving, Texas 75039
Certified Mail Receipt:
Receipt No.: 9589 0710 5270 0748 0722 12

McKesson Corporation
Agent for Service of Process:
Corporation Service Company Which Will Do
Business in California as
CSC- Lawyers Incorporating Service
2710 Gateway Oaks Dr., Suite 150N
Sacramento, California 95833
Certified Mail Receipt:
Receipt No.: 9589 0710 5270 0748 0722 29

**Re: LWDA CASE NO. LWDA-CM-891556-22
SUPPLEMENTAL NOTICE PURSUANT TO LABOR CODE
SECTIONS 2698 *et seq.***

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiff John Nakatani, on behalf of himself and all others similarly situated, hereby submits this supplemental notice to clarify the facts and allegations previously asserted in his original notice. This notice relates back to the notice initially submitted in this action. Plaintiff gives this supplemental written notice by online submission to the Labor and Workforce Development Agency, and by certified mail to Defendant McKesson Corporation, via its agent for service of process.

In his initial notice, Plaintiff claimed that he and the group of non-exempt employees working with Defendant during the relevant time period ("Aggrieved Employees") were frequently not paid minimum wages and overtime because they were required to work off the clock during supposed meal periods, which should have been compensable time. However, they were not

compensated for this time. Plaintiff also alleged that Defendant's random off-the-clock security checks interrupted meal periods, violating the requirements of Labor Code section 512 and the Wage Order.

Furthermore, Plaintiff incorporated the allegations contained in his Class Action Complaint by enclosing it with the original notice and stating that "All Labor Codes and related allegations pertain to all entities or individuals named in the Complaint, even if not specified." In the Class Action Complaint, which is enclosed again herewith, Plaintiff expanded on his allegations related to the Defendant's failure to provide lawful meal periods and detailed all of Defendant's violations pursuant to Labor Code section 512. To avoid any confusion, Plaintiff reiterates the allegations contained in his original notice and the Complaint herein.

Specifically, Plaintiff and the Aggrieved Employees regularly worked in excess of five hours a day without being provided a meal period of not less than 30 minutes in which they were relieved of all duties, as required by California Labor Code §§226.7, 512, and Wage Order No. 5-2001 and 7-2001. Plaintiff and the Aggrieved Employees were often not provided lawful meal periods in part because Defendant maintained and enforced scheduling practices, staffing practices, and imposed work demands and schedules that frequently required employees to forego their breaks or return before thirty minutes. Plaintiffs and the Aggrieved Employees were also not provided second meal periods on days when shifts exceeded ten hours (and twelve hours).

Moreover, Defendant failed to pay the premium pay at one hour's additional wage at the employee's regular rate of compensation mandated by Labor Code §226.7(c) and Wage Order No. 5-2001 and 7-2001, subd. 11(B) for each workday they did not receive a timely uninterrupted meal period. As a result of the violation of California Labor Code §§ 226.7 and 512 and Wage Order 7-2001, Defendant is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.* Further, Defendant failed to pay premiums at the proper rate because it failed to take all forms of compensation, including incentives, bonuses, shift differentials, and other wages into account in calculating the regular rate. This constituted a violation of Labor Code.

While all the above facts and allegations were explicitly contained in the original notice and/or enclosed Class Action Complaint, we have submitted this supplemental notice for ease of reference. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

/s/ Christina M. Lucio

Christina M. Lucio, Esq.

Enclosure: Ex. A, Original Notice with Class Action Complaint attached
Ex. B, Conformed PAGA Complaint

EXHIBIT A

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

June 26, 2022

Via Online Filing (LWDA) and Certified Mail (Employer)

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

McKesson Corporation
6555 North State Highway 161
Irving, Texas 75039
Certified Mail Receipt:
7021 1970 0000 9061 0034

McKesson Corporation
6535 North State Highway 161
Irving, Texas 75039
Certified Mail Receipt:
7021 1970 0000 9061 0041

McKesson Corporation
Agent for Service of Process:
Corporation Service Company Which Will Do
Business in California as
CSC- Lawyers Incorporating Service
2710 Gateway Oaks Dr., Suite 150N
Sacramento, California 95833
Certified Mail Receipt:
7021 1970 0000 9061 0058

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 et seq.

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiff John Nakatani, on behalf of himself and all others similarly situated, hereby gives NOTICE of his Complaint pursuant to Labor Code Sections 2698, *et seq.* against Defendant McKesson Corporation, a Delaware Corporation, and DOES 1 through 50, inclusive. Plaintiff intends to commence an action against Defendants pursuant to Labor Code sections 2698 *et seq.* Plaintiff hereby gives written notice by online submission to the Labor and Workforce Development Agency, and by certified mail to Defendant McKesson Corporation, via its agent for service of process.

Plaintiff was employed by Defendants as an hourly, non-exempt employee in Sacramento County. Plaintiff Nakatani was employed by Defendants in an hourly non-exempt position from September 2021 through December 2021. Specifically, he was employed in the position of order picker. He typically worked 5 days per week, and often 9.5 to 10 hours per day.

The group of aggrieved employees that Plaintiff seeks to represent is a group of non-exempt employees working with Defendants during the relevant time period. (“Aggrieved Employees”) This notice is timely as it is provided within one year of the violations.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Plaintiff has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees working for Defendants regardless of their classification, job title, or whether they were hired directly or through a labor contractor or staffing agency.

Failure to Pay Minimum Wages, Including Overtime

Plaintiff alleges that Defendants violated Labor Code sections 510, 1194, 1198 and the IWC Wage Order by failing to pay all wages owed including overtime and minimum wages. The Wage Orders 1-2001 and 9-2001 and Labor Code sections 1194 and 1197 provide that an employee must be paid at least minimum wage for each hour worked and overtime as applicable. Labor Code section 510 and the Wage Orders provide that employees working for more than eight (8) hours in a day or forty (40) hours in a work week are entitled to overtime compensation at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a work week. An employee who works more than twelve (12) hours in a day or more than eight (8) hours on the seventh day in a workweek is entitled to overtime compensation at a rate of twice the regular rate of pay.

Plaintiff alleges that he and the aggrieved employees were frequently not paid minimum wages and earned overtime because they were required to work while off the clock before and after shifts, and during purported meal periods. Such time is compensable time. However, in violation of the law, Plaintiff and the aggrieved employees were not paid for such time.

By way of example only, Plaintiff and the Aggrieved Employees were required to stand in line to clock in because a number of employees were required to use the time clock at the same time for given shifts. Employees were required to be at their work stations by their scheduled shifts and were required to report for work early in order to ensure that they were not late. Employee punch in start time were rounded up to their scheduled start times to the detriment of the employees. This rounding was not neutral and led to systematic undercompensation of employees both as a result of the rounding and standing in line.

By way of further example, Defendants required employees to fill out Covid-related questionnaires and have their temperatures taken while off the clock. There was often a line to

have temperatures taken and/or take the screening. All such time was off the clock and should have been compensated.

As an additional example, random off the clock security checks were conducted approximately once a month after Aggrieved Employees clocked out for meal breaks. Such security checks interrupted meal periods and constitute a violation of the requirements of Labor Code section 512 and the Wage Order.

Further, in terms of overtime, Defendants frequently failed to pay overtime hours at 1.5 times the regular rate as required by law because Defendants failed to incorporate all differentials, non-discretionary sums, bonuses, and incentives in the regular rate. By way of example and not limitation, Defendants maintained an incentive program by which employees earned incentives for meeting certain benchmarks and goals. For example, employees earned incentives by having no errors in a month. Further, Defendants regularly paid bonuses and incentives for performance and other compensation, but such sums were not factored into the regular rate.

Thus, employees were systematically undercompensated in violation of the Labor Code.

Failure to Authorize and Permit Rest Periods

Plaintiff alleges that Defendants failed to authorize and permit rest periods. This failure violated Labor Code §§ 226.7, 1198, and Section 12(A) of IWC Wage Order 1-2001 and 9-2001 which provides that employers shall authorize and permit employees to take a rest period of net ten (10) minutes for each four (4) hours, or major fraction thereof, worked. This action is further brought under Labor Code § 226.7(b) and Section 12(B) of Wage Order 4 and 7, which provides that if an employer fails to authorize and permit a lawful rest period, the employer shall pay the employee one hour of additional pay at the employee's regular rate of compensation for each workday that a rest period was not authorized and permitted. Plaintiff and the aggrieved employees were systematically not authorized and permitted to take legally compliant net ten (10) minute rest periods for every four hours worked or major fraction thereof, which is a violation of the Labor Code section 226.7, 1198, and IWC Wage Order. Employees were not authorized and permitted to take a net ten-minute rest period as required by law, in part because Defendants maintained and enforced scheduling practices, staffing practices, and imposed work demands and schedules that frequently required employees to forego their breaks or return before a net ten minutes of rest. To the extent any rest periods were taken they were not compliant because employees were essentially required to remain on duty by Defendants prohibition of Plaintiff and Aggrieved Employees to leave the premises during rest periods. In addition, as a matter of policy and practice, Defendants failed to provide third rest periods to employees working over 10 hours. Defendants violated the law by failing to compensate Plaintiff and the aggrieved employees with one additional hour of pay at their regular rate of compensation when lawful rest periods were not lawfully provided in violation of Labor Code §§ 226.7 and 512, 1198 and the applicable Industrial Welfare Commission Wage Orders.

Failure to Timely Pay Wages During Employment

Labor Code section 204 requires that all wages are due and payable twice in each calendar month. The wages required by Labor Code §§226.7, 510, 1194, and other sections became due and payable to Plaintiff and each aggrieved employee in each month that he or she was not provided with a meal period or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled. Defendants violated Labor Code §204 by systematically refusing to pay wages due under the Labor Code.

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

- (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
- (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

Failure to Provide Accurate Itemized Employee Wage Statements

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

Defendants have failed to record many of the items delineated in applicable Industrial Wage Orders and Labor Code section 226, and required under Labor Code section 1174, including by virtue of the fact that each wage statement which failed to accurately compensate Plaintiff and Aggrieved Employees for all hours worked and for missed and non-provided meal and rest periods, or which failed to include compensation for all minimum wages earned or overtime hours worked, as described herein, was an inaccurate wage statement. In addition, Defendants failed to include all applicable hourly rates in effect during each pay period, including Plaintiff’s and Aggrieved Employees’ hourly and overtime rates of pay. Defendants also failed to indicate the number of hours worked at each rate and the pay period during which certain sums were earned.

Failure to Keep Accurate Payroll Records

Plaintiff also contends that Defendants failed to keep accurate records as required by Wage Order 1-2001, Wage Order 9-2001, Labor Code 1174, and 1198. The IWC Wage Orders required in pertinent part: Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be records...(5) Total hours worked in the payroll period and applicable rate of pay..." Labor Code section 1174 also requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, its employees. On information and belief and based thereon, Defendants have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged herein, including without limitation, failing to keep records of all hours worked, failing to keep track of all wages earned at the proper rates.

Failure to Timely Pay All Wages Owed Upon Separation of Employment

Defendants have violated California Labor Code §§ 201 and 202 by willfully failing to pay all compensation due and owing to Plaintiff and all other similarly situated former employees at the time employment as required under California Labor Code §§ 201 and 202, including meal premium pay and overtime pay. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages due, including without limitation rest period premiums, sick pay, minimum wages and overtime at the proper rate, immediately upon discharge or within seventy-two (72) hours of voluntary separation of employment. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced.

Further, separate and apart from any derivative violation, employees were not paid their final wages on their date of termination or within 72 hours, as required by law, as a matter of Defendants' policy and practice.

Therefore, Defendants have violated California Labor Code §§201, 202, and 203, and Defendants are liable for civil penalties pursuant to Labor Code §§2698 *et seq.*

Failure to Reimburse Necessary Expenses

Labor Code section 2802 requires employers to reimburse employees for necessary expenses incurred. Defendants' also violated California Labor Code §2802 by failing to reimburse Plaintiff and Aggrieved Employees for necessary expenses for cellular phone expenses. Employees were required to download an application onto their personal cellular phones to answer Covid-related questions. Plaintiff and the Aggrieved Employees were not reimbursed for such expenses.

Failure to Properly Pay Sick Leave

In addition to the violation specified above and in the attached Complaint, Plaintiff alleges that Defendants failed to pay sick leave pay to Plaintiff and the Aggrieved Employees at the proper rate. Labor Code 246(i) provides: An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified. Labor Code section 246(1) provides: “For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations: (1) Paid sick leave for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.” In this case, Plaintiff alleges that Defendant failed to pay sick leave at the proper rate because it failed to take all forms of compensation, including incentives, bonuses, shift differentials, and other wages into account in calculating the regular rate. This constitutes a violation of Labor Code.

All Labor Codes and related allegations pertain to all entities or individuals named in the Complaint, even if not so specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

/s/ Christina M. Lucio

Christina M. Lucio, Esq.

Enclosure: Class Action Complaint

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

Attorneys for Plaintiffs Sovatana Saut and John Hisato Nakatani,
on behalf of themselves and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SOVATANA SAUT and JOHN HISATO
NAKATANI, individually and on behalf
of themselves and all others similarly
situated,

Plaintiffs,

v.

MCKESSON CORPORATION, a
Delaware Corporation, and DOES 1-50,
inclusive,

Defendants.

Case No.

COMPLAINT

Assigned for All Purposes To:

Hon.

Dept.:

COMPLAINT FOR DAMAGES FOR:

- 1) **Failure to Pay Minimum Wages;**
- 2) **Failure to Pay Overtime Owed;**
- 3) **Failure to Provide Lawful Meal Periods;**
- 4) **Failure To Authorize And Permit Rest Periods;**
- 5) **Failure to Timely Pay Wages During Employment**
- 6) **Failure to Timely Pay Wages Owed Upon Separation From Employment;**
- 7) **Failure to Reimburse Necessary Expenses;**
- 8) **Knowing and Intentional Failure to Comply with Itemized Wage Statement Provisions;**
- 9) **Violation of the Unfair Competition Law;**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiffs SOVATANA SAUT and JOHN HISATO NAKATANI (“Plaintiffs”), individually and on behalf of others similarly situated, and asserts claims against Defendants MCKESSON CORPORATION, a Delaware Corporation; and DOES 1-50, inclusive (collectively “Defendants” or “McKesson Corporation”) as follows:

INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure section 382, on behalf of Plaintiffs and any and all persons who are or were employed by Defendants, either directly or indirectly, in the State of California at any time from four years prior to the filing of this Complaint through resolution or trial of the matter. (“Class Members” or “Non-Exempt Employees”).

2. Defendants implemented uniform policies and practices that deprived Plaintiffs and Class Members of earned wages, including minimum wages; straight time wages; overtime wages; premium wages; lawful meal and/or rest breaks; reimbursement for necessary expenses; and timely payment of wages.

3. Such actions and policies, as described above and further herein, were and continue to be in violation of the California Labor Code. Plaintiffs, on behalf of themselves and all Class Members, bring this action pursuant to the California Labor Code, including sections 201, 202, 203, 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 227.3, 245-249, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197, 1198, 2802, applicable IWC California Wage Orders and California Code of Regulations, Title 8, section 11000 *et seq.*, seeking unpaid wages, unpaid meal and rest period compensation, unreimbursed expenses, penalties, liquidated damages, and reasonable attorneys’ fees and costs.

4. Plaintiffs, on behalf of themselves and others similarly situated, pursuant to Business and Professions Code sections 17200-17208, also seek restitution from Defendants for their failure to pay to Plaintiffs and Class Members all of their wages, including overtime and premium wages.

JURISDICTION AND VENUE

5. This action is brought as a Class Action on behalf of Plaintiffs and similarly situated

1 employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The monetary
2 damages and restitution sought by Plaintiffs exceed the minimum jurisdiction limits of the
3 California Superior Court and will be established according to proof at trial.

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

8 7. This Court has jurisdiction over this Action pursuant to California Code of Civil
9 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

10 8. This Court has jurisdiction over Defendants because, upon information and belief,
11 each Defendant is either a resident of California, has sufficient minimum contacts in California, or
12 otherwise intentionally avails itself of the California market so as to render the exercise of
13 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
14 substantial justice. Defendants have done and are doing business throughout California and Los
15 Angeles County.

16 9. The unlawful acts alleged herein have a direct effect on Plaintiff Saut and other
17 similarly situated Non-Exempt Employees within Los Angeles County and it is believed that
18 Defendants have employed hundreds of Class Members as Non-Exempt Employees in Los Angeles
19 County, and throughout the State.

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

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

PARTIES

12. Defendant McKesson Corporation is a Delaware Corporation doing business in the state of California. It is based at 6555 North State Highway 161 Irving, Texas 75039.

13. Upon information and belief, McKesson Corporation employs Non-Exempt Employees, like Plaintiffs, throughout the State of California.

14. Plaintiff Sovatana Saut is and during the liability period has been, a resident of California.

15. Plaintiff John Hisato Nakatani is and during the liability period has been, a resident of California.

16. Plaintiffs were employed in hourly, non-exempt positions by Defendants during the relevant time period.

17. Plaintiffs and the members of the putative class were employed as hourly paid employees employed by Defendants, either directly or indirectly, in the State of California at any time from four years prior to the filing of this Complaint.

18. Whenever in this complaint reference is made to any act, deed, or conduct of Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through one or more of Defendants' officers, directors, agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of Defendants.

19. The true names and capacities of Defendants, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiffs, who therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

20. Plaintiffs are informed and believe, and thereon allege, that the Doe Defendants are

1 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
2 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
3 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits
4 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the
5 liability of the Defendants as alleged herein.

6 21. Plaintiffs are further informed and believe, and thereon allege, that at all times
7 material herein, each Defendant was completely dominated and controlled by its co-Defendants
8 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint
9 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed
10 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
11 Whenever and wherever reference is made to individuals who are not named as Defendants in this
12 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times
13 acted on behalf of Defendants named in this complaint within the scope of their respective
14 employments.

15 **FACTUAL ALLEGATIONS**

16 22. During the relevant time frame, Defendants compensated Plaintiffs and the Non-
17 Exempt Employees based upon an hourly wage.

18 23. Plaintiffs and the Class Members were, and at all times pertinent hereto, have been
19 non-exempt employees within the meaning of the California Labor Code, and the implementing
20 rules and regulations of the IWC California Wage Orders. They are subject to the protections of
21 the IWC Wage Orders and the Labor Code.

22 24. During the relevant time, Plaintiff Saut was employed by Defendants in an hourly,
23 non-exempt position from approximately July 2005 through November 2021. Specifically, he was
24 employed in the position of material handler. He usually worked approximately 5 days per week
25 and 8 hours per day. He typically worked 40 plus hours per week.

26 25. During the relevant time period, Plaintiff Nakatani was employed by Defendants in
27 an hourly non-exempt position from September 2021 through December 2021. Specifically, he
28 was employed in the position of order picker. He typically worked 5 days per week, and often 9.5

1 to 10 hours per day.

2 26. Plaintiffs are informed and believe, and thereon allege, that Defendants are and were
3 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
4 requirements of California's wage and employment laws.

5 27. All Class Members are similarly situated in that they are all subject to Defendants'
6 uniform policies and systemic practices as specified herein.

7 28. Plaintiffs and the Class Members were required to clock in at the beginning of
8 their shifts, clock out for lunch, in at the end of their lunch periods and out at the end of their
9 shifts.

10 29. However, Plaintiffs and the Class Members were not paid for all hours worked
11 because employees were required to work off the clock and because Defendants unlawfully
12 rounded the hours worked by Plaintiffs and the Class Members such that they were not paid for
13 all hours worked.

14 30. By way of example only, Plaintiffs and the Class Members were required to stand
15 in line to clock in because a number of employees were required to use the time clock at the same
16 time for given shifts. Employees were required to be at their works stations by their scheduled
17 shifts and were required to report for work early in order to ensure that they were not late to their
18 work stations. Employee punch in start time were rounded up to their scheduled start times to the
19 detriment of the employees. This rounding was not neutral and led to systematic
20 undercompensation of employees both as a result of the rounding and standing in line.

21 31. Further, Plaintiffs and the Class Members were required to work off the clock for
22 Covid screenings and other pre shift activities prior to clocking in. By way of example, Plaintiffs
23 and the Class Members were required to wait in line, and participate in daily temperature checks
24 and fill out Covid questionnaires prior to clocking in. Accordingly, Plaintiffs and the Class
25 Members were not properly paid for all hours worked.

26 32. By way of further example, Plaintiffs and the Class Members were required to
27 submit to security checks randomly. Such security checks were done while off the clock. As
28 such, Plaintiffs and the Class Members were not properly paid for all hours worked.

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

4 34. Upon information and belief, Defendants failed to incorporate all forms of non
5 discretionary compensation into the regular rate, including differentials, contests/raffles, bonuses,
6 gift cards, and incentives.

7 35. By way of example, Plaintiffs and Class Members were provided with gift cards
8 as bonuses at various times during the year and such sums were not incorporated into the regular
9 rate. In addition such gift cards were not recorded or shown on wage statements.

10 36. By way of further example, Defendants provided gift cards and incentive points to
11 incentivize Plaintiffs and Class Members to increase productivity, meet targets/benchmarks, and
12 avoid mistakes. The incentive points were redeemed for gift cards and other items with cash
13 value. This constitutes non-discretionary compensation that should be included in the regular
14 rate. However, Plaintiffs alleges that such sums were not included in the regular rates paid to
15 Plaintiffs and, upon information and belief, the Class Members.

16 37. Plaintiffs and the Class Members were regularly required to work shifts in excess
17 of five hours without being provided a lawful meal period and, on occasion, over ten hours in a
18 day without being provided a second lawful meal period as required by law.

19 38. Indeed, during the relevant time, as a consequence of Defendants' scheduling
20 practices, work demands, and Defendants' policies and practices, Defendants frequently failed to
21 provide Plaintiffs and the Class Members timely, legally complaint uninterrupted 30-minute meal
22 periods as required by law. Not only were Plaintiffs' and the Class Members' first meal breaks
23 frequently not provided, untimely or short, but also Plaintiffs and the Class Members were not
24 provided a second meal period when working shifts in excess of 10 hours and in excess of 12
25 hours as a matter of pattern and practice.

26 39. On information and belief, Plaintiffs and Class Members did not waive their rights
27 to a second meal period.

28 40. Further, random off the clock security checks were conducted approximately once

1 a month after employees clocked out for meal breaks. Such security checks interrupted meal
2 periods and constitute a violation of the requirements of Labor Code section 512 and the Wage
3 Order.

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

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

12 43. In addition, during the relevant time frame, Plaintiffs and the Class Members were
13 systematically not authorized and permitted to take one net ten-minute paid, rest period for every
14 four hours worked or major fraction thereof, which is a violation of the Labor Code and IWC
15 wage order.

16 44. Defendants maintained and enforced scheduling practices, policies, and imposed
17 work demands that frequently required Plaintiffs and Class Members to forego their lawful, paid
18 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
19 requisite rest periods were not timely authorized and permitted.

20 45. Moreover, Plaintiffs and the Class Members were not permitted to leave the
21 premises during rest periods. Defendants' failure to relinquish control over employees during rest
22 periods constitutes a violation of the Labor Code.

23 46. In addition, Defendants failed to authorize and permit third rest periods as a matter
24 of policy and practice on shifts over ten hours.

25 47. Despite the above-mentioned rest period violations, Defendants did not
26 compensate Plaintiffs, and on information and belief, did not pay Class Members one additional
27 hour of pay at their regular rate as required by California law, including Labor Code section 226.7
28 and the applicable IWC wage order, for each day on which lawful rest periods were not

1 authorized and permitted.

2 48. Moreover, Plaintiffs and the Class Members were required to incur necessary
3 expenses in the discharge of their duties, but were not reimbursed for such costs.

4 49. By way of example only, Class Members were required to use cellular phones in
5 the discharge of their duties, including to download applications and to answer Covid-19
6 screening questionnaires.

7 50. Defendants also failed to provide accurate, lawful itemized wage statements to
8 Plaintiffs and the Class Members in part because of the above specified violations. In addition,
9 Defendants failed to include the applicable rates and hours on pay stubs as required by law.
10 Defendants also omitted the period of earning on wage statements for certain incentives. All of
11 these omissions constitute violations of the law.

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

19 52. Plaintiffs are informed and believe, and thereon allege, that at all times herein
20 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
21 thereof for resignations without prior notice as the case may be) they had a duty to accurately
22 compensate Plaintiffs and Class Members for all wages owed including straight time, overtime,
23 meal and rest period premiums, and that Defendants had the financial ability to pay such
24 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
25 because of the above-specified violations.

26 53. Plaintiffs and the Class Members are covered by applicable California IWC Wage
27 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
28 section 11000 *et seq.*

1 **CLASS ACTION ALLEGATIONS**

2 54. Plaintiffs bring this action on their own behalf, as well as on behalf of each and
3 every other person similarly situated, and thus, seeks class certification under California Code of
4 Civil Procedure §382.

5 55. All claims alleged herein arise under California law for which Plaintiffs seeks relief
6 as authorized by California law.

7 56. The proposed class is comprised of and defined as: **all persons who are or were**
8 **employed by the Defendants as hourly paid, non-exempt employees in the State of California**
9 **at any time from four years prior to the filing of this action through resolution or trial of the**
10 **matter.** (hereinafter collectively referred to as the “Class” or “Class Members”).

11 57. Plaintiffs also seek to represent Subclasses included in the Plaintiffs’ Class, which
12 are composed of Class Members satisfying the following definitions:

13 a. All Class Members who were required to complete Covid-19 questionnaires
14 while off the clock. (collectively “**Covid-19 Subclass**”);

15 b. All Class Members who were subjected to security checks while off the
16 clock. (collectively “**Security Check Subclass**”);

17 c. All Class Members who were not paid at least minimum wage for all hours
18 worked (collectively “**Minimum Wage Subclass**”);

19 d. All Class Members who had their hours worked rounded (collectively
20 “**Rounding Subclass**”);

21 e. All Class Members who were not accurately paid overtime for hours worked
22 over eight in a day or over forty in a workweek (collectively “**Overtime Subclass**”);

23 f. All Class Members who worked more than five (5) hours in a workday and
24 were not provided with a timely, uninterrupted lawful meal period of net thirty (30) minutes, and
25 were not paid compensation of one hour premium wages at the employee’s regular rate in lieu
26 thereof (hereinafter collectively referred to as the “**First Meal Period Subclass**”);

27 g. All Class Members who worked more than ten hours in a workday and were
28 not provided with a timely, uninterrupted lawful second meal period of thirty (30) minutes, and

1 were not paid compensation of one hour premium wages at the employee's regular rate in lieu
2 thereof (hereinafter collectively referred to as the "**Second Meal Period Subclass**");

3 h. All Class Members who worked more than three and a half hours in a
4 workday and were not authorized and permitted to take a net 10-minute rest period for every four
5 (4) hours or major fraction thereof worked per day and were not paid compensation of one hour
6 premium wages at the employee's regular rate in lieu thereof (hereinafter collectively referred to
7 as the "**Rest Period Subclass**");

8 i. All Class Members who were not permitted to leave the premises during rest
9 periods. (collectively referred to as the "**On Premises Rest Period Subclass**");

10 j. All Class Members who worked over ten hours in a shift. (collectively
11 referred to as the "**Over 10 Subclass**");

12 k. All Class Members who were not reimbursed for all necessary expenditures
13 (collectively "**Indemnification Subclass**");

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

17 m. All Class Members who were not provided with accurate and complete
18 itemized wage statements (hereinafter collectively referred to as the "**Inaccurate Wage Statement**
19 **Subclass**");

20 n. All Class Members who were employed by Defendants and subject to
21 Defendant's Unfair Business Practices (hereinafter collectively referred to as the "**Unfair Business**
22 **Practices Subclass**").

23 58. Plaintiffs reserve the right, under Rule 3.765, California Rules of Court, to amend
24 or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate,
25 or if it should be deemed necessary by the Court or to further divide the Class Members into
26 additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the
27 Class Members or the Plaintiffs' Class includes the members of each of the Subclasses.

28 59. As set forth in further detail below, this action has been brought and may properly

1 be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure
2 because there is a well-defined community of interest in the litigation, and the proposed Class and
3 Subclasses are easily ascertainable through Defendants' records.

4 a. Numerosity: The members of the Class and Subclasses are so numerous that
5 joinder of all members of the Class and Subclasses would be unfeasible and impractical. The
6 membership of the entire Class and Subclasses is unknown to Plaintiffs at this time, however, the
7 Class is estimated to be hundreds of individuals. Accounting for employee turnover during the
8 relevant periods necessarily increases this number substantially. Plaintiffs allege Defendants'
9 employment records would provide information as to the number and location of all Class
10 Members. Joinder of all members of the proposed Class is not practicable.

11 b. The proposed class is easily ascertainable. The number and identity of the
12 class members are determinable from Defendants' payroll records and time records for each class
13 member.

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

- 17 1. Whether Defendants accurately paid Class Members for all hours worked;
- 18 2. Whether Defendants rounding practices were lawful;
- 19 3. Whether Defendants knew or should have known that Class Members were
20 required to perform work off the clock;
- 21 4. Whether Defendants required Class Members to participate in off-the-clock
22 Covid 19 questionnaires and screenings;
- 23 5. Whether Defendants accurately calculated and paid all Class Members
24 overtime premiums for the hours which Plaintiffs and Class Members
25 worked in excess of eight (8) hours per day and/or forty (40) hours per week;
- 26 6. Whether Defendants accurately paid employees double time for hours
27 worked in excess of 12 hours in one day or for work over 8 hours in a day
28 on the seventh day of work in a workweek;

6. Whether Defendants had a policy and practice of providing lawful, timely meal periods in accordance with Labor Code § 512, as well as the applicable Industrial Welfare Commission (“IWC”) wage order;
7. Whether Defendants had a policy and practice of complying with Labor Code section 226.7 and IWC Wage Order on each instance that a lawful, timely 30-minute uninterrupted meal period was not provided;
8. Whether Defendants failed to authorize and permit a lawful, net 10-minute rest period to the Class Members for every four (4) hours or major fraction thereof worked;
9. Whether Defendants required employees to remain on the premises during rest periods;
10. Whether Defendants had a policy and practice of complying with Labor Code section 226.7 and the IWC Wage Order on each instance that a lawful rest period was not provided;
11. Whether Defendants failed to timely pay all wages upon separation in accordance with Labor Code sections 201-202;
12. Whether Defendants failed to reimburse employees for necessary expenses in accordance with Labor Code section 2802;
13. Whether Defendants omitted required information from itemized wage statements;
14. Whether Defendants failed to maintain accurate records of Class Members' earned wages, work periods, meal periods and deductions;
15. Whether Defendants engaged in unfair competition in violation of section 17200 et seq. of the Business and Professions Code;
16. Whether Defendants' conduct was willful and/or reckless;
17. Whether Defendants failed to provide accurate itemized wage statements in violation of Labor Code § 226; and
18. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violations of California law.

1 d. Typicality: Plaintiffs are qualified to, and will fairly and adequately protect
2 the interests of each member of the Class and Subclasses with whom they have a well-defined
3 community of interest. Plaintiffs' claims herein alleged are typical of those claims which could be
4 alleged by any member of the Class and/or Subclasses, and the relief sought is typical of the relief
5 which would be sought by each member of the Class and/or Subclasses in separate actions. All
6 members of the Class and/or Subclasses have been similarly harmed by Defendants' failure to
7 provide lawful meal and rest periods, failure to reimburse expenses, failure to provide accurate
8 wage statements, failure to timely pay wages at termination, failure to pay minimum wages,
9 rounding practices, and failure to accurately pay all wages earned including all owed premium and
10 overtime wages, all due to Defendants' policies and practices that affected each member of the
11 Class and/or Subclasses similarly. Further, Defendants benefited from the same type of unfair
12 and/or wrongful acts as to each member of the Class and/or Subclasses.

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

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

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

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

20 CLASS ACTION CLAIMS

21 FIRST CAUSE OF ACTION

22 FAILURE TO PAY MINIMUM WAGES

23 (By Plaintiffs and the Class Against Defendants)

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

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

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

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

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

12 65. The applicable wage orders and California Labor Code sections 1197 and 1182.12
13 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by
14 state law.

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

19 67. During all relevant periods, the California Labor Code and wage orders required that
20 Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all
21 hours worked.

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

25 69. At all times relevant, Plaintiffs and Class Members consistently worked hours for
26 which they were not paid because Defendants frequently required Plaintiffs and the Class Members
27 to work off the clock, including without limitation for Covid-19 screenings and security checks,
28 and to wait in line to clock in.

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

71. In addition, Defendants failed to pay at least minimum wage for all hours worked because, upon information and belief, Defendants rounded hours worked against Plaintiff and the Class Members' interests.

72. Defendant's policy and practice of not paying all minimum wages violates California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the applicable wage order 1-2001 and 9-2001.

73. Due to Defendants' violations of the California Labor Code and wage orders, Plaintiffs and the Class Members are entitled to recover from Defendant their unpaid wages, statutory penalties, reasonable attorneys' fees and costs in this action, and pre-judgment and post-judgment interest, as well as liquidated damages.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME OWED

(By Plaintiffs and the Class Against All Defendants)

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

75. During all relevant periods, Defendants required Plaintiffs and the Class Members to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours per workweek.

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

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

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

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

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

16 81. As a result, Defendants failed to pay Plaintiffs and the Class Members earned
17 overtime wages and such employees suffered damages as a result.

18 82. In addition, upon information and belief, Defendants failed to incorporate all forms
19 of compensation, including without limitation bonuses, differentials, gift cards, and incentives, into
20 the regular rate for overtime purposes.

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

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

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE LAWFUL MEAL PERIODS
(By Plaintiffs and the Class Against All Defendants)

85. Plaintiffs incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

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

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

88. As a consequence of Defendants' policies and practices, requirements, demands, coverage and staffing, Plaintiffs and the Class Members were often required to forego such meal periods, take shortened meal periods, and/or commence their meal periods into and beyond the sixth hour of their shifts.

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

90. Moreover, as a matter of policy and practice, upon information and belief, the Class members were also not provided second meal periods on days when shifts exceeded ten hours (and twelve hours), nor were they provided premium wages in lieu of a second meal period. On information and belief, Plaintiffs and the Class Members did not lawfully waive their rights to a second meal period on shifts in excess of ten hours.

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

92. Pursuant to Labor Code § 226.7, Plaintiffs and Class Members are entitled to recover one (1) hour of premium pay for each day in which a meal period violation occurred. They are also

1 entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

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

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS**

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

10 94. Plaintiffs incorporate by reference and realleges each and every allegation contained
11 above, as though fully set forth herein.

12 95. Pursuant to the IWC wage orders applicable to Plaintiffs' and Class Members'
13 employment by Defendants, "Every employer shall authorize and permit all employees to take rest
14 periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized
15 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
16 rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall
17 be counted as hours worked, for which there shall be no deduction from wages."

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

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

24 98. Despite said requirements of the IWC wage orders applicable to Plaintiffs' and Class
25 Members' employment with Defendants, Defendants failed and refused to authorize and permit
26 Plaintiffs and Class Members to take lawful, net ten (10) minute rest periods for every four (4)
27 hours worked, or major fraction thereof. Such rest breaks, when provided, were frequently
28

1 untimely or less than net ten minutes because of the work requirements imposed by Defendants,
2 and frequent calls during rest periods.

3 99. Further, as a matter of policy and practice, Defendants did not authorize and permit
4 third rest periods on shifts over ten hours.

5 100. Defendants did not pay Plaintiffs one additional hour of pay at their regular rate of
6 pay for each day that a rest period violation occurred. On information and belief, the other members
7 of the Class endured similar violations as a result of Defendants' rest period policies and practices
8 and Defendant did not pay said Class Members premium pay as required by law.

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

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

20
21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING**
23 **EMPLOYMENT**

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

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

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

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

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

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

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

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

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

SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION

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

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

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

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

1 days of wages.

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

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

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

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

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO REIMBURSE NECESSARY EXPENSES**

16 **(By Plaintiffs and the Indemnification Subclass Against All Defendants)**

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

19 116. Labor Code § 2802 requires Defendants to indemnify Plaintiffs and Class
20 Members for necessary expenditures incurred in direct consequence of the discharge of his or her
21 duties.

22 117. Plaintiff and the members of the Indemnification Class were required to incur
23 expenses in the performance of their assigned job duties, including for cellular phone usage and
24 applications.

25 118. Upon information and belief, the Defendants did not reimburse Plaintiff or the
26 Plaintiff's subclass for such expenses.

27 119. As a result of the unlawful acts of Defendants, Plaintiffs and the Plaintiffs'
28 Subclass Members have been deprived of un-reimbursed sums in amounts to be determined at

1 trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon,
2 attorneys' fees, and costs, pursuant to Labor Code §2802.

3 **EIGHTH CAUSE OF ACTION**

4 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**
5 **EMPLOYEE WAGE STATEMENT PROVISIONS**

6 **By Plaintiffs and Wage Statement Subclass Against Defendants**

7 120. Plaintiffs repeats and incorporate herein by reference each and every allegation set
8 forth above, as though fully set forth herein.

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

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

25 123. Labor Code section 1174 of the California also requires Defendants to maintain
26 and preserve, in a centralized location, among other items, records showing the names and
27 addresses of all employees employed and payroll records showing the hours worked daily by, and
28 the wages paid to, its employees. On information and belief and based thereon, Defendants have

1 knowingly and intentionally failed to comply with Labor Code section 1174, including by
2 implementing the policies and procedures and committing the violations alleged in the preceding
3 causes of action and herein. Defendants' failure to comply with Labor Code section 1174 is
4 unlawful pursuant to Labor Code section 1175.

5 124. Defendants have failed to record many of the items delineated in applicable
6 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
7 1174, including by virtue of the fact that each wage statement which failed to accurately
8 compensate Plaintiffs and Class Members for all hours worked and for missed and non-provided
9 meal and rest periods, or which failed to include compensation for all minimum wages earned or
10 overtime hours worked, was an inaccurate wage statement. In addition, the wage statements
11 failed to state number of hours worked and each hourly wage rate, as well as the dates during
12 which certain sums (incentives) were earned.

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

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

1 failure to pay meal and rest period premiums as required by law.

2 127. Moreover, upon information and belief, as a pattern and practice, in violation of
3 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
4 accurate records pertaining to the total hours worked for Defendants by the members of the Wage
5 Statement Class, including but not limited to, beginning and ending of each work period, meal
6 period and split shift interval, the total daily hours worked, and the total hours worked per pay
7 period and applicable rates of pay.

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

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

19 **NINTH CAUSE OF ACTION**

20 **VIOLATION OF THE UNFAIR COMPETITION LAW**

21 **By Plaintiffs and Class Against All Defendants**

22 130. Plaintiffs incorporate by reference and realleges each and every allegation contained
23 above, as though fully set forth herein.

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

28 132. Defendants' policies, activities, and actions as alleged herein are violations of

1 California law and constitute unlawful business acts and practices in violation of California
2 Business and Professions Code §§ 17200, *et seq.*

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

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

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

16 136. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiffs
17 and the Class Members are entitled to restitution of the wages withheld and retained by Defendants
18 during a period that commences four (4) years prior to the filing of this complaint; an award of
19 attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of
20 costs.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray judgment against Defendants, jointly and severally, as
23 follows:

24 **Class Certification**

- 25 1. That this action be certified as a class action;
- 26 2. That Plaintiffs be appointed as the representative of the Class;
- 27 3. That Plaintiffs be appointed as the representatives of the Subclasses; and
- 28 4. That counsel for Plaintiffs be appointed as counsel for the Class and Subclasses.

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On the First Cause of Action

(Failure to pay minimum wages)

1. For the unpaid balance of the full amount of any minimum wages, and regular wages owed, as well as interest thereon,
2. Penalties according to statute,
3. Liquidated damages,
4. Reasonable attorneys’ fees, and costs of suit;
5. For interest and
6. For such other and further relief as the Court deems proper.

On the Second Cause of Action

(Failure to pay overtime)

1. For the unpaid balance of the full amount of any overtime wages owed, as well as interest thereon,
2. Penalties according to statute,
3. Liquidated damages,
4. Reasonable attorneys’ fees, and costs of suit;
5. For interest and
6. For such other and further relief as the Court deems proper.

On the Third Cause of Action

(Failure to Provide Lawful Meal Periods)

1. For one (1) hour of premium pay for each day in which a required meal period was not lawfully provided;
2. For reasonable attorneys’ fees and costs pursuant to statute; and
3. For such other and further relief as the Court deems proper.

On the Fourth Cause of Action

(Failure to Authorize and Permit Lawful Rest Periods)

1. For one (1) hour of premium pay for each day in which a required rest period was not lawfully authorized and permitted; and
2. For reasonable attorneys' fees and costs pursuant to statute; and
3. For such other and further relief as the Court deems proper.

On the Fifth Cause of Action

(Failure to Timely Pay Wages Due and Payable During Employment)

1. For unpaid wages;
2. For penalties pursuant to Labor Code § 210 and 25% of the amount of wages unlawfully withheld;
3. For interest;
4. For reasonable attorneys' fees and costs pursuant to statute; and
5. For such other and further relief as the Court deems proper.

On the Sixth Cause of Action

(Failure to Timely Pay Wages At Separation)

6. For unpaid wages;
7. For penalties pursuant to Labor Code § 203;
8. For interest;
9. For reasonable attorneys' fees and costs pursuant to statute; and
10. For such other and further relief as the Court deems proper.

On the Seventh Cause of Action

(Failure to Reimburse Necessary Expenses)

1. For unreimbursed sums;
2. For reasonable attorneys' fees and costs pursuant to statute;
3. For interest; and
4. For such other and further relief as the Court deems proper.

On the Eighth Cause of Action

(Failure to Provide Accurate Itemized Wage Statements)

1. For statutory penalties, including penalties pursuant to Labor Code section 226;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper;

On the Ninth Cause of Action

(Violation of the Unfair Competition Law)

1. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of sums to Plaintiffs and Class Members for the Defendants' past failure to pay minimum, overtime and regular wages, for Defendants' past failure to reimburse necessary expenses, and for premium wages for meal and rest periods that were not provided to Plaintiffs and Class Members over the last four (4) years in an amount according to proof;

2. For reasonable attorneys' fees that Plaintiffs and Class Members are entitled to recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194, 1197, 1198 ;

3. For pre-judgment interest on any unpaid minimum, regular and overtime wages due from the day that such amounts were due;

4. For costs of suit incurred herein that Plaintiffs and Class Members are entitled to recover under the Labor Code; and

5. For such other and further relief as the Court deems proper.

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Respectfully submitted,


JAMES HAWKINS, APLC
James R. Hawkins, Esq.
Christina M. Lucio, Esq.

Attorneys for SOVATANA SAUT and JOHN HISATO
NAKATANI, on behalf of themselves and all others
similarly situated

EXHIBIT B

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

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By: Megan A. Caldwell
Deputy Clerk

Attorneys for Plaintiff DARWIN COLINAYO,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF PLACER

DARWIN COLINAYO, individually and
on behalf of himself and all others
similarly situated,

Plaintiff,

v.

MCKESSON MEDICAL-SURGICAL
INC., a Virginia Corporation, and DOES
1-50, inclusive,

Defendants.

Case No. **S-CV-0049039**

REPRESENTATIVE COMPLAINT

Assigned for All Purposes To:
Hon.
Dept.:

COMPLAINT FOR DAMAGES FOR:

- 1. Civil Penalties Under Private Attorneys' General Act, Labor Code Section § 2698 et seq.**

Plaintiff DARWIN COLINAYO ("Plaintiff"), an individual, asserts claims against defendant MCKESSON MEDICAL-SURGICAL, INC., a Virginia Corporation; and DOES 1-50, inclusive (collectively "Defendants" or "McKesson Medical-Surgical, Inc.") as follows:

INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys' General Act of 2004 ("PAGA"), Cal. Lab. Code section 2698 *et seq.* PAGA permits "aggrieved employees" to bring a lawsuit as a representative action on behalf of himself and all other current

1 and former aggrieved employees, to recover civil penalties and address an employer's violations of
2 the California Labor Code.

3 2. Plaintiff brings this action pursuant to the PAGA on a representative basis on behalf
4 of all non-exempt employees working directly or indirectly for Defendants in the State of California
5 (the "Aggrieved Employees") from one year prior to the filing of the PAGA notice to the conclusion
6 of this action.

7 3. Plaintiff brings this action on behalf of himself and the Aggrieved Employees to
8 recover civil penalties and address Defendants' violations of the California Labor Code and the
9 IWC Wage Orders.

10 4. Pursuant to *Huff v. Securitas Services*, 23 Cal. App. 5th 745, 751 (2018), an
11 employee who brings a representative action and was affected by at least one of the violations
12 alleged in the complaint has standing to pursue penalties on behalf of the state and not only for that
13 violation, but for violations affecting other employees as well. Accordingly, Mr. Colinayo has
14 standing to pursue penalties on behalf of the state of violations affecting all the aggrieved
15 employees working for Defendants, regardless of their classification, job title, or locations in
16 California.

17 5. In this case, Defendants violated various provisions of the California Labor Code
18 and IWC Wage Order. Defendants' violations include: (1) failure to pay minimum wages; (2)
19 failure to accurately pay overtime wages; (3) failure to provide lawful meal periods; (4) failure to
20 authorize and permit lawful rest periods; (5) failure to timely pay wages owed during employment;
21 (6) failure to timely pay wages upon separation from employment; (7) failure to reimburse
22 necessary expenses; (8) knowing and intentional failure to comply with itemized employee wage
23 statement provisions; (9) failure to properly pay sick leave; (10) failure to keep accurate records;
24 and (11) unlawful warehouse conditions.

25 6. This action is timely because Plaintiff suffered from a violation or numerous
26 violations of the California Labor Code within one year of the date on which a PAGA notice was
27 sent to the LWDA via online submission. More than 65 days have passed, and no response has
28 been received by the LWDA. A copy of the letter sent to the LWDA with enclosure is attached

1 hereto as **Exhibit A**, thereby satisfying the notice requirement under the statute and permitting
2 Plaintiff to proceed with this action in a representative capacity.

3 7. In addition, as to the wage and hour claims arising during the relevant period,
4 Plaintiff alleges, upon information and belief, that Defendants consistently maintained and enforced
5 against its Non-Exempt Employees unlawful practices and policies in violation of the California
6 Labor Code and the applicable Wage Order. Plaintiff alleges that Defendants failed to lawfully and
7 accurately pay Plaintiff and Aggrieved Employees for all hours worked, including minimum wages
8 and overtime; failed to lawfully provide meal and rest periods; failed to pay one hour of pay at the
9 employee's regular rate of pay when legally mandated meal or rest periods were not lawfully
10 provided; failed to accurately pay overtime; failed to reimburse necessary expenses; failed to
11 provide accurate itemized wage statements; failed to timely pay all wages earned during
12 employment, failed to properly pay sick leave, failed to keep accurate records, and provided
13 unlawful warehouse conditions.

14 **JURISDICTION AND VENUE**

15 8. This Court has jurisdiction over this action pursuant to the California Constitution
16 Article VI section 10, which grants the California Superior Court original jurisdiction in all causes
17 except those given by statute to other courts.

18 9. Further, there is no federal question at issue, as the issues herein are based solely on
19 California statutes and law, including the Labor Code, IWC Wage Orders, the California Code of
20 Civil Procedure, the California Civil Code, and the California Business and Professions code.

21 10. Venue is proper in this Court because upon information and belief, one or more of
22 the Defendants transact business, or have offices in this County and the acts or omissions alleged
23 herein took place in this County and because Plaintiffs presently reside in this County.
24 Additionally, most of the acts, events, and violations occurred in this County.

25 **PARTIES**

26 11. Defendant McKesson Medical-Surgical, Inc. is a Virginia Corporation doing
27 business in the state of California. Its principal address is 9954 Mayland Dr., Suite 4000,
28 Richmond, VA 23233.

1 12. Upon information and belief, McKesson Medical-Surgical, Inc. employs Non-
2 Exempt Employees, like Plaintiff, throughout the State of California.

3 13. At all times during the relevant period, Plaintiff Darwin Colinayo was a resident of
4 California.

5 14. Plaintiff was employed in an hourly, non-exempt position by Defendants during the
6 relevant time period. Specifically, he was employed as Picker.

7 15. Plaintiff and the members of the aggrieved group were employed, directly or
8 indirectly, by Defendants as non-exempt employees in the State of California from one year prior
9 to the filing of the PAGA notice to the conclusion of this action.

10 16. Whenever in this complaint reference is made to any act, deed, or conduct of
11 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through
12 one or more of Defendants' officers, directors, agents, employees, or representatives, who was
13 actively engaged in the management, direction, control, or transaction of the ordinary business and
14 affairs of Defendants.

15 17. The true names and capacities of Defendants, whether individual, corporate,
16 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
17 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §
18 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
19 capacities of the Defendants designated hereinafter as DOES when such identities become known.

20 18. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are
21 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
22 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
23 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits
24 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the
25 liability of the Defendants as alleged herein.

26 19. Plaintiff is further informed and believes, and thereon alleges, that at all times
27 material herein, each Defendant was completely dominated and controlled by its co-Defendants
28 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint

1 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed
2 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
3 Whenever and wherever reference is made to individuals who are not named as Defendants in this
4 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times
5 acted on behalf of Defendants named in this complaint within the scope of their respective
6 employments.

7 **FACTUAL ALLEGATIONS**

8 20. During the relevant time frame, Defendants compensated Plaintiff and the
9 Aggrieved Employees based upon an hourly wage.

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

14 22. During the relevant time, Plaintiff was employed by Defendants in an hourly, non-
15 exempt position from approximately October 2021 through April 2022. Plaintiff was employed in
16 the position of cherry picker. He usually worked approximately 5 days per week and 8 hours per
17 day. His typical workweek was from 7 a.m. to 3:30 pm from Saturday through Wednesday. He
18 also often worked several hours of overtime several times a week

19 23. The members of the putative wage and hour Aggrieved Group were non-exempt,
20 hourly employees of Defendants throughout the state of California during the liability period.

21 24. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
22 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
23 requirements of California's wage and employment laws.

24 25. All Aggrieved Employees, including Plaintiff, are similarly situated in that they
25 are all subject to Defendants' uniform policies and systemic practices as specified herein.

26 26. Plaintiff and, upon information and belief, the Aggrieved Employees were not
27 properly compensated for all hours worked, in part because they were frequently required to work
28 off the clock. By way of example only, Plaintiff and, upon information and belief the Aggrieved

1 Employees, were required to work off the clock, including without limitation for Covid screenings,
2 donning and doffing, and other pre shift activities prior to clocking in.

3 27. By way of example, Plaintiff and, upon information and belief, the Aggrieved
4 Employees were required to wait in line, to participate in daily temperature checks and fill out
5 Covid screening questionnaires prior to clocking in. These are hours worked that should have
6 been compensated. However, they were not. Accordingly, Plaintiff and the Aggrieved
7 Employees were not properly paid for all hours worked.

8 28. By way of further example, Plaintiff and, upon information and belief, the
9 Aggrieved Employees were required to wear protective gear. Plaintiff and, upon information and
10 belief, the Aggrieved Employees were required to put on the protective gear prior to clocking in.
11 Plaintiff and, upon information and belief, the Aggrieved Employees were also required, on
12 occasion, to take off their protective gear after clocking out for their shifts. As such, Plaintiff and
13 the Aggrieved Employees were not properly paid for all hours worked.

14 29. Further, Plaintiff and the Aggrieved Employees were required to perform certain
15 pre-shift activities prior to clocking in, including to prepare for work by replacing batteries in
16 work devices.

17 30. In addition, Plaintiff and the Aggrieved Employees were also required to clean and
18 maintain uniforms while off the clock. However, the Company did not pay employees for such
19 time and did not reimburse for maintenance expenses.

20 31. In addition, upon information and belief, the Aggrieved Employees frequently
21 worked in excess of eight (8) hours a day and/or over forty (40) hours in a work week, but were
22 not properly paid for such time at a rate of time and one-half the employee's regular rate of pay
23 per hour.

24 32. Upon information and belief, Defendants failed to accurately calculate the regular
25 rate of Plaintiff and Aggrieved Employees by failing to include all forms of payment into the
26 calculation, including but not limited to—differentials, bonuses, incentives, and benefits. Due to
27 Defendants' failure to accurately calculate the regular rate of employees, Plaintiff and the
28 Aggrieved Employees were not properly compensated for all hours worked and were not paid the

proper rate for owed premiums.

33. By way of example, Plaintiff and upon information and belief, the Aggrieved Employees earned gift cards as bonuses at various times during the year, and for performing certain tasks and meeting certain requirements. Such sums were not incorporated into the regular rate. In addition, such gift cards were not recorded or shown on wage statements.

34. By way of further example, Defendants paid certain incentives to Plaintiff and the Aggrieved Employees, including without limitation the DC Incent. but did not incorporate such additional sums into the regular rate.

35. Further, Plaintiff and upon information and belief, the Aggrieved Employees earned certain differentials and “supplemental rates” that were not factored into the regular rate.

36. Further, Plaintiff and the Aggrieved Employees earned vouchers by completing certain tasks and meeting certain expectations/targets. The value of these vouchers were not incorporated into the regular rate. In addition, such vouchers were not recorded or shown on wage statements.

37. Moreover, Defendants failed to pay sick leave and vacation at the regular rate as required by Labor Code section 246 and Labor Code 227.3.

38. Plaintiff and, upon information and belief, the Aggrieved Employees were also often required to work shifts in excess of five hours without being provided a lawful 30-minute uninterrupted meal period by the end of the fifth hour and over ten hours in a day without being provided a second lawful 30 minute meal period as required by law.

39. Indeed, during the relevant time, as a consequence of Defendants’ staffing and scheduling practices, lack of coverage, work demands, and Defendants’ policies and practices (including sales incentives and compensation practices), Defendants frequently failed to provide Plaintiff and the Aggrieved Employees timely, legally complaint uninterrupted 30-minute meal periods on shifts over five hours and over ten hours as required by law.

40. On information and belief, Plaintiff and Aggrieved Employees did not waive their rights to meal periods under the law.

41. Plaintiff and the Aggrieved Employees were not provided with valid lawful on-

1 duty meal periods.

2 42. Despite the above-mentioned meal period violations, Defendants often failed to
3 compensate Plaintiff, and on information and belief, often failed to compensate Aggrieved
4 Employees, one additional hour of pay at their regular rate as required by California law when meal
5 periods were not timely or lawfully provided in a compliant manner.

6 43. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
7 should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees
8 were entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7
9 but were not receiving such compensation.

10 44. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
11 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
12 period for every four hours worked or major fraction thereof, which is a violation of the Labor
13 Code and IWC wage order.

14 45. Defendants maintained and enforced scheduling practices, policies, and imposed
15 work demands and sales/commissions practices that frequently required Plaintiff and Aggrieved
16 Employees to forego their lawful, paid rest periods of a net ten minutes for every four hours
17 worked or major fraction thereof. Such requisite rest periods were not timely authorized and
18 permitted.

19 46. Moreover, Plaintiff and the Aggrieved Employees were not permitted to leave the
20 premises during rest periods. Defendants' failure to relinquish control over employees during rest
21 periods constitutes a violation of the Labor Code.

22 47. In addition, Defendants failed to authorize and permit third rest periods as a matter
23 of policy and practice on shifts over ten hours.

24 48. Despite the above-mentioned rest period violations, Defendants did not
25 compensate Plaintiff, and on information and belief, did not pay Aggrieved Employees one
26 additional hour of pay at their regular rate as required by California law, including Labor Code
27 section 226.7 and the applicable IWC wage order, for each day on which lawful rest periods were
28 not authorized and permitted.

1 49. Moreover, Plaintiff and the Aggrieved Employees incurred necessary expenses in
2 the discharge of their duties, including without limitation downloading applications and to answer
3 Covid-19 screening questionnaires and uniform maintenance. In addition, Defendants did not
4 reimburse Plaintiff and the Aggrieved Employees for costs incurred to clean and maintain their
5 work uniforms.

6 50. Defendants also failed to provide accurate, lawful itemized wage statements to
7 Plaintiff and the Aggrieved Employees in part because of the above specified violations. In
8 addition, upon information and belief, Defendants failed to include the applicable rates and hours
9 on pay stubs as required by law. Defendants also omitted the period of earning on wage
10 statements for certain incentives. All of these omissions constitute violations of the law.

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

18 52. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
20 thereof for resignations without prior notice as the case may be) they had a duty to accurately
21 compensate Plaintiffs and Aggrieved Employees for all wages owed including minimum wages,
22 commissions, overtime, meal and rest period premiums, and that Defendants had the financial
23 ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed
24 to do so in part because of the above-specified violations.

25 53. Defendants also maintained and enforced practices and policies to systematically
26 not compensate Plaintiff and Aggrieved Employees sick pay wages upon separation from
27 employment.

28 54. In addition, Defendants failed to provide suitable warehouse conditions. Plaintiff

1 and, upon information and belief, the Aggrieved Employees were subject to extreme temperatures
2 and lack of ventilation at Defendants' warehouses.

3 55. Plaintiff is informed and believes that Defendants' violation of the Labor Code and
4 the IWC wage orders as specified herein was willful and deliberate.

5 56. Plaintiff and the Aggrieved Employees are covered by applicable California IWC
6 Wage Orders and corresponding applicable provisions of the California Code of Regulations, Title
7 8, section 11000 *et seq.*

8 57. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 currently employ and during the relevant period have employed hundreds of retail employees in
10 the State of California.

11 ***FAILURE TO PAY MINIMUM WAGES***

12 58. At all times relevant, Labor Code §1194 provides that any employee receiving less
13 than the legal minimum wage or the legal overtime compensation applicable to the employee is
14 entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or
15 overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

16 59. Labor Code §1197 states: "The minimum wage for employees fixed by the
17 commission is the minimum wage to be paid to employees, and the payment of a less wage than
18 the minimum so fixed is unlawful."

19 60. Cal. Lab. Code § 1198 further states that the employment of an employee for longer
20 hours than those fixed by the Industrial Welfare Commission is unlawful.

21 61. IWC Wage Order 9-2001, 1-2001, and 7-2001 similarly requires that employees be
22 paid on the established payday for the period involved, not less than the applicable minimum wage
23 for all hours worked in the payroll period, whether the remuneration is measured by time, piece,
24 commission, or otherwise.

25 62. The IWC Wage Orders define "hours worked" as "the time during which an
26 employee is subject to the control of an employer, and includes all the time the employee is
27 suffered or permitted to work, whether or not required to do so."
28

1 63. At all times relevant, Plaintiff and Aggrieved Employees consistently worked
2 hours for which they were not paid because Plaintiff and the Aggrieved Employees were required
3 to work off the clock.

4 64. Plaintiff is informed and believes that Defendants and its managers were aware
5 that Plaintiff and the Aggrieved Employees were working off the clock and that they should have
6 been paid for this time.

7 65. Upon information and belief, Defendants knew or should have known Plaintiffs
8 and the Aggrieved Employees were undercompensated.

9 66. Defendants' failure to pay Plaintiff and Aggrieved Employees the unpaid balance of
10 wages owed violates the provisions of Labor Code §1194, §1197, §1198, and the applicable IWC
11 wage orders, has damaged Plaintiff and the Aggrieved Employees, and is therefore unlawful.

12 67. Accordingly, Defendants owe Plaintiff and Aggrieved Employees wages, including
13 minimum wages, and have failed and refused, and continue to fail and refuse, to pay Plaintiffs and
14 Aggrieved Employees the wages owed.

15 68. Pursuant to Labor Code §1197.1, Plaintiff and the Aggrieved Employees are entitled
16 to claim all applicable civil penalties as a direct result of Defendants' policy and practice of paying
17 a wage less than the minimum fixed by an order of the commission.

18 ***FAILURE TO ACCURATELY PAY OVERTIME WAGES***

19 69. At all times relevant, pursuant to Labor Code section 510, 1194, and the IWC
20 wage orders 9-2001, 1-2001, and 7-2001, non-exempt employees working for more than eight (8)
21 hours in a day or forty (40) hours in a work week were entitled to overtime compensation at the
22 rate of one and one-half times the regular rate of pay for all hours worked in excess of eight (8)
23 hours in a day or forty (40) hours in a work week. An employee who works more than twelve
24 (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work in a
25 particular work week is entitled to overtime compensation at a rate of twice the regular rate of
26 pay.

27 70. California law requires that in determining the regular rate of pay for purposes of
28 calculating the proper overtime premium pay, the employer must consider not only straight

1 hourly wage compensation but must also include payment of all remuneration earned during the
2 applicable time period.

3 71. At times, Plaintiff and the Members of the Aggrieved Group received additional
4 remuneration, including non-discretionary bonuses and/or incentive pay during pay periods in
5 which they had worked over eight hours in a day or over forty hours in a week. Defendants failed
6 to account for the additional remuneration when calculating Plaintiff's and similarly situated
7 employees' overtime rate of pay. This policy, practice, and/or procedure resulted in Defendants
8 paying its hourly non-exempt employees less overtime than they should have received.

9 72. Upon information and belief, Defendants knew or should have known Plaintiffs
10 and the Aggrieved Employees were undercompensated.

11 73. Defendants' failure to pay Plaintiff and Aggrieved Employees the unpaid balance of
12 wages owed violates the provisions of Labor Code §510, §1194, §1197, §1198, and Wage Orders
13 9-2001 and 7-2001 and is therefore unlawful.

14 74. Accordingly, Defendants owe Plaintiff and Aggrieved Employees wages, including
15 overtime wages, and have failed and refused, and continue to fail and refuse, to pay Plaintiffs and
16 Aggrieved Employees the wages owed.

17 75. Pursuant to Labor Code §1197.1, Plaintiff and the Aggrieved Employees are
18 entitled to claim all applicable civil penalties as a direct result of Defendants' policy and practice
19 of paying a wage less than the minimum fixed by an order of the commission.

20 ***FAILURE TO PROVIDE LAWFUL MEAL PERIODS***

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

26 77. Similarly, pursuant to Labor Code § 512, no employer shall employ an employee
27 for a work period of more than ten (10) hours without providing a second meal break of not less
28

1 than thirty (30) minutes in which the employee is relieved of all of his or her duties. A second meal
2 break may only be waived by mutual consent, and if the employee did not waive his or her first
3 meal period, and the employee's work day will not exceed twelve hours.

4 78. During the relevant time period, Defendants failed to provide Plaintiff and
5 Aggrieved Employees timely and uninterrupted first meal periods of not less than thirty (30)
6 minutes within the first five hours of a shift. During the relevant time period, Defendants also
7 failed to provide Plaintiff and Aggrieved Employees timely and uninterrupted second meal periods
8 of not less than thirty (30) minutes on shifts longer than ten hours.

9 79. Indeed, during the relevant time, as a consequence of Defendants' staffing and
10 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
11 Plaintiff and the Aggrieved Employees were not provided with legally required meal periods.

12 80. On information and belief, Plaintiff and Aggrieved Employees did not waive their
13 rights to meal periods under the law.

14 81. Plaintiff and the Aggrieved Employees were not provided with valid lawful on-
15 duty meal periods.

16 82. Further, upon information and belief, Defendants impeded or discouraged Plaintiff
17 and the Aggrieved Employees from taking lawful meal periods.

18 83. Plaintiff and the Aggrieved Employees were not paid one hour of pay at their regular
19 rate for each day that a first or second meal period was not lawfully provided.

20 84. However, Defendants failed to accurately calculate Plaintiff and the Aggrieved
21 Employees' regular rate, by failing to incorporate all forms of payment including but not limited
22 to, incentives, bonuses, and commissions. This inaccurate calculation led to Plaintiff and Aggrieved
23 Employees' regular rate being incorrect and therefore wages being inaccurately paid.

24 85. As a proximate result of the aforementioned violations, Plaintiff and the Aggrieved
25 Employees have been damaged in an amount according to proof at time of trial.

26 ***FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS***

27 86. Pursuant to the IWC wage orders applicable to Plaintiff's and Aggrieved
28 Employees' employment by Defendants, "Every employer shall authorize and permit all employees

1 to take rest periods, which insofar as practicable shall be in the middle of each work period....
2 [The] authorized rest period time shall be based on the total hours worked daily at the rate of ten
3 (10) minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest
4 period time shall be counted as hours worked, for which there shall be no deduction from wages.”

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

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

11 89. Despite said requirements of the IWC wage orders applicable to Plaintiff’s and
12 Aggrieved Employee’s employment with Defendants, Defendants failed and refused to authorize
13 and permit Plaintiff and Aggrieved Employees to take lawful, net ten (10) minute rest periods for
14 every four (4) hours worked, or major fraction thereof.

15 90. Further, upon information and belief, Defendants impeded or discouraged Plaintiff
16 and the Aggrieved Employees from taking lawful rest periods.

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

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

1 93. However, Defendants failed to accurately calculate Plaintiff and the Aggrieved
2 Employees' regular rate, by failing to incorporate all forms of payment including but not limited
3 to, incentives, bonuses, and commissions. This inaccurate calculation led to Plaintiff and Aggrieved
4 Employees' regular rate being incorrect and therefore premium wages being inaccurately paid.

5 ***FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING***
6 ***EMPLOYMENT***

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

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

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

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

16 98. Labor Code section 210 (a) provides that "In addition to, and entirely independent
17 and apart from, any other penalty provided in this article, every person who fails to pay the wages
18 of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
19 1197.5, shall be subject to a penalty as follow:

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

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

25 ***FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION***

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

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

5 101. In addition, irrespective of any derivative violation, Defendants failed to timely pay
6 Plaintiffs, and, upon information and belief, other Aggrieved Employees earned compensation at
7 the time of termination despite their obligations under Labor Code 201 and 202.

8 102. Plaintiff and Aggrieved Employees are entitled to compensation for all forms of
9 wages earned, including but not limited to minimum wages, overtime, and premium meal and rest
10 period compensation, but to date have not received such compensation, therefore entitling them to
11 Labor Code § 203 penalties.

12 103. More than thirty (30) days have passed since affected Aggrieved Employees have
13 left Defendants' employ, and on information and belief, they have not received payment pursuant
14 to Labor Code § 203.

15 ***KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED***
16 ***EMPLOYEE WAGE STATEMENT PROVISIONS***

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

28 105. Further, IWC Wage Order 7-2001 requires in pertinent part: Every employer shall

1 keep accurate information with respect to each employee including the following: (3) Time
2 records showing when the employee begins and ends each work period. Meal periods, split shift
3 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the
4 payroll period and applicable rates of pay....”

5 106. Labor Code section 1174 of the California also requires Defendants to maintain
6 and preserve, in a centralized location, among other items, records showing the names and
7 addresses of all employees employed and payroll records showing the hours worked daily by, and
8 the wages paid to, its employees. On information and belief and based thereon, Defendants have
9 knowingly and intentionally failed to comply with Labor Code section 1174, including by
10 implementing the policies and procedures and committing the violations alleged in the preceding
11 causes of action and herein. Defendants’ failure to comply with Labor Code section 1174 is
12 unlawful pursuant to Labor Code section 1175.

13 107. Defendants have failed to record many of the items delineated in applicable
14 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
15 1174, including by virtue of the fact that each wage statement which failed to accurately
16 compensate Plaintiff and Aggrieved Employees for all hours worked and for missed and non-
17 provided meal and rest periods, or which failed to include compensation for all minimum wages
18 earned or overtime hours worked, was an inaccurate wage statement.

19 108. On information and belief, Defendants failed to implement and preserve a lawful
20 record-keeping method to record all hours worked, meal periods, and non-provided meal and rest
21 periods owed to employees, as required for Non-Exempt Employees under California Labor Code
22 section 226 and applicable California Wage Orders. In order to determine if they had been paid
23 the correct amount and rate for all hours worked, Plaintiff and Aggrieved Employees have been,
24 would have been, and are compelled to try to discover the required information missing from
25 their wage statements and to perform complex calculations in light of the inaccuracies and
26 incompleteness of the wage statements Defendants provided to them.

27 109. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
28 Wage Orders, Defendants did not and still do not furnish each of the members of the Aggrieved

1 Employees with an accurate itemized statement in writing accurately reflecting all of the required
2 information. Specifically, Defendants failed to include the applicable rates and hours on pay stubs
3 as required by law. Defendants also omitted the period of earning on wage statements for certain
4 incentives. All of these omissions constitute violations of the law. In addition, Defendants have
5 failed to provide accurate itemized wage statements as a consequence of the above-specified
6 violations for failure to accurately pay all wages owed, accurately record all hours worked, and
7 failure to pay meal and rest period premiums as required by law.

8 110. Moreover, upon information and belief, as a pattern and practice, in violation of
9 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
10 accurate records pertaining to the total hours worked for Defendants by the members of the
11 Aggrieved Employees, including but not limited to, beginning and ending of each work period,
12 meal period and split shift interval, the total daily hours worked, and the total hours worked per
13 pay period and applicable rates of pay.

14 111. Plaintiffs and the members of the Aggrieved Employees have suffered injury as a
15 result of Defendants' failure to maintain accurate records for the members of the Aggrieved
16 Employees in that the members of the Aggrieved Employees were not timely provided written
17 accurate itemized statements showing all requisite information, such that the members of the
18 Aggrieved Employees were misled by Defendants as to the correct information regarding various
19 items, including but not limited to the total hours worked by the employee, gross pay, net wages
20 earned and all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate.

22 ***FAILURE TO REIMBURSE NECESSARY EXPENSES***

23 112. Plaintiff repeats and incorporates herein by reference each and every allegation set
24 forth above, as though fully set forth herein.

25 113. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Aggrieved
26 Employees for necessary expenditures incurred in direct consequence of the discharge of his or
27 her duties.

28 114. Plaintiff and the members of the Aggrieved Group were required to incur expenses

1 in the performance of their assigned job duties. For example, Plaintiff and the Indemnification
2 Aggrieved Employees were required to incur numerous out of pocket expenses, including without
3 limitation, application downloading and uniform maintenance expenses in direct consequence of
4 the discharge of their duties.

5 115. Upon information and belief, the Defendants did not reimburse Plaintiff or the
6 Plaintiff's Aggrieved Group for such expenses.

7 ***FAILURE TO PROPERLY PAY SICK LEAVE***

8 116. In addition to the violations set forth in the complaint, Plaintiff alleges that
9 Defendants violated Labor Code section 246(l) which provides: For the purposes of this section,
10 an employer shall calculate paid sick leave using any of the following calculations: (1) Paid sick
11 time for non-exempt employees shall be calculated in the same manner as the regular rate of pay
12 for the workweek in which the employee uses paid sick time, whether or not the employee
13 actually works overtime in that work week.

14 117. In violation of Labor Code section 246, Defendant failed to pay sick leave at the
15 proper regular rate as it did not factor in all forms of compensation, including without limitation
16 commissions, bonuses, incentives, differentials, and all other forms of compensation.

17 118. Defendants violated Labor Code section 1198, and Wage Order 9-2001, 1-2001,
18 and 7-2001 by violating the temperature control guidelines set forth in Section 15 of the Wage
19 Orders. In relevant part, Section 15 of the Wage Order states:

20 (A) The temperature maintained in each work area shall provide reasonable
21 comfort consistent with industry-wide standards for the nature of the process and the work
22 performed.

23 (B) If excess heat or humidity is created by the work process, the employer shall
24 take all feasible means to reduce such excessive heat or humidity to a degree providing
25 reasonable comfort. Where the nature of the employment requires a temperature of less
26 than 60°F., a heated room shall be provided to which employees may retire for warmth,
27 and such room shall be maintained at no less than 68°F.

1 (C) A temperature of not less than 68°F shall be maintained in the toilet rooms,
2 resting rooms, and change rooms during hours of use.

3 119. Plaintiff alleges that both he and the Aggrieved Employees were subjected to
4 temperatures and conditions that violated the Wage Orders and Labor Code section 1198, as
5 Defendants failed to comply with the mandates set forth in the law. Plaintiff and the Aggrieved
6 Employees were subjected to extreme temperatures and lack of ventilation at Defendants'
7 warehouses in violation of these mandates. Plaintiff asserts this claim on behalf of a subgroup of
8 Aggrieved Employees that worked in Defendants' warehouses ("Aggrieved Warehouse
9 Employees").

10 **CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION**

12 ***PENALTIES UNDER THE PRIVATE ATTORNEYS' GENERAL ACT, LABOR CODE***
13 ***SECTION 2698 ET SEQ.***

14 120. Plaintiff incorporates by reference each and every paragraph above, and realleges
15 each and every allegation contained above as though fully set forth herein.

16 121. On June 28, 2022, Plaintiff gave written notice by online submission to the LWDA
17 and by certified mail to Defendants of Defendants' violations of numerous provisions of the
18 California Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were paid
19 as required by statute. A copy of the letter sent to the LWDA with enclosure is attached hereto as
20 **Exhibit A.**

21 122. Plaintiff is an "aggrieved employee" as defined in Labor Code Section 2699(A), as
22 she was employed by Defendants during the statutory period and suffered one or more of the
23 Labor Code violations set forth herein. She seeks to recover of herself and all other current and
24 former aggrieved employees of Defendants the civil penalties provided by PAGA, plus
25 reasonable attorneys' fees and costs.

26 123. 65 days have passed, and no response has been received from the LWDA.
27 Accordingly, the LWAD has permitted Plaintiff to proceed in a representative capacity.
28

1 124. Plaintiff has exhausted all administrative procedures required of them under the
2 Labor Code §§2698, 2699, 2699.3, and as a result, is justified as a matter of right in bringing
3 forward this cause of action.

4 125. Pursuant to Labor Code section 2699(a) Plaintiff seeks to recover civil penalties
5 for which Defendants are liable due to numerous Labor Code violations as set forth in this
6 Complaint.

7 126. Plaintiff seeks to recover the PAGA civil penalties through a representative action
8 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
9 4th 969. Class certification of the PAGA claims is not required.

10 127. Pursuant to Labor Code section 2698 et seq. and 2699(a), Plaintiff seeks to recover
11 civil penalties for which Defendants are liable due to numerous Labor Code and Wage Order
12 violations as set forth in this Complaint.

13 128. Specifically, Plaintiff, on behalf of herself and the Aggrieved Employees, seek
14 penalties under Labor Code §2699, for, without limitation, the claims set forth herein, including:

- 15 a. Defendants' failure to comply with the requirement of Labor Code §1182.12,
16 1194, 1197, 1198, and Wage Orders to pay at least minimum wage for every
17 hour worked;
- 18 b. Defendants' failure to comply with the requirement of Labor Code §510, 1194,
19 1197, 1198, and Wage Orders to accurately pay all wages earned;
- 20 c. Defendants' failure to comply with the requirement of Labor Code §216 to pay
21 wages after demand was made;
- 22 d. Defendants' failure to comply with the requirement of Labor Code §§204 and
23 210 to pay, without condition and within the time set by the applicable article,
24 all wages, or parts thereof;
- 25 e. Defendants' failure to comply with the requirement of Labor Code §225.5 to
26 pay wages due;
- 27 f. Defendants' failure to comply with the requirement of Labor Code §§201 and
28 202 to pay wages due to former employees;

- g. Defendants' failure to comply with the requirement of Labor Code §203 to pay waiting time penalties to former employees;
- h. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to authorize and permit ten (10) minute rest breaks;
- i. Defendants' failure to comply with the requirement of Labor Code §§226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each statutorily required rest break that was not lawfully authorized and permitted;
- j. Defendants' failure to comply with the requirement of Labor Code §226.7, 512, 1198, and IWC Wage Orders to provide timely, uninterrupted 30 minute off-duty meal periods;
- k. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each lawful meal break that was not provided;
- l. Defendants' failure to provide accurate compliant wage statements under Labor Code section 226;
- m. Defendants' failure to reimburse necessary expenses in violation of Labor Code §2802;
- n. Defendants' failure to properly pay sick leave in violation of Labor Code §246;
- o. Defendants' failure to provide suitable warehouse conditions in violation of Labor Code §1198 and Wage Orders 9-2001, 1-2001, and 7-2001;

129. Plaintiff seeks civil penalties for Defendants' violation of Labor Code provisions for which a civil penalty is specifically provided, including but not limited to the following:

- a. Pursuant to Labor Code §210, for violations of Labor Code §204, Defendants are subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred

1 (\$200) per employee for violations in subsequent ay periods plus 25% of the
2 amount unlawfully withheld.

- 3 b. Pursuant to Labor Code §226.3, for violations of Labor Code §226 (a)
4 Defendants are subject to a civil penalty in the amount of two hundred and
5 fifty dollars (\$250) per aggrieved employee for the initial pay period where a
6 violation occurs and one thousand dollars (\$1,000) per aggrieved employee for
7 violations in subsequent pay periods.
- 8 c. Pursuant to Labor Code §558(a), “[a]ny employer or other person acting on
9 behalf of an employer who violated, or causes to be violated, a section of this
10 chapter or any provision regulating hours and days of work in any order of the
11 Industrial Welfare Commission,” including Labor Code §§510 and 512, shall
12 be subject to a civil penalty, in addition to any other penalty provided by law,
13 of fifty dollars (\$50) for initial violations for each underpaid employee for each
14 pay period for which the employee was underpaid and one hundred dollars
15 (\$100) for each subsequent violation for each underpaid employee for each pay
16 period for which the employee was underpaid.
- 17 d. Pursuant to Labor Code §1197.1, an employer who pays or causes to be paid to
18 any employee a wage less than the minimum fixed by an order of the
19 commission, shall be subject to a civil penalty as follows: for any initial
20 violation that is intentionally committed, one hundred dollars (\$100) for each
21 underpaid employee for each pay period for which the employee is underpaid;
22 and for each subsequent violation of the same offense, two hundred fifty
23 dollars (\$250) for each underpaid employee for each pay period for which the
24 employee is underpaid regardless of whether the initial violation was
25 intentionally committed.

26 130. Further, as a result of the acts alleged hereinabove, Plaintiff seeks penalties under
27 Labor Code §§2698 et seq. and 2699 because of Defendants’ violation of numerous provisions of
28 the California Labor Code and IWC Wage Orders.

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray judgment against Defendants, as follows:

1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq. for the violations specified above;
2. For penalties under Labor Code sections 210, 226.3, 1174.5, 1197.1, and 2699(a) and (f);
3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
4. For reasonable attorneys' fees, expenses, and costs under Labor Code §§ 1194, 226, 2699, and/or Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and for such other and further relief as the Court deems proper.

Respectfully submitted,

Dated: September 2, 2022


JAMES HAWKINS, APLC
James R. Hawkins, Esq.
Christina M. Lucio, Esq.

Attorneys for Plaintiff DARWIN COLINAYO, on behalf
of himself and all others similarly situated

EXHIBIT A

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

June 28, 2022

Via Online Filing (LWDA)

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

McKesson Medical-Surgical, Inc.
6535 North State Highway 161
Irving, Texas 75039
Receipt No.: 7021 0950 0000 7161 5330

McKesson Medical-Surgical, Inc.
Agent for Service of Process:
Corporation Service Company Which Will Do Business in California as
CSC- Lawyers Incorporating Service
2710 Gateway Oaks Dr., Suite 150N
Sacramento, California 95833
Receipt No.: 7021 0950 0000 7161 5347

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiff Darwin Colinayo, on behalf of himself and all others similarly situated, hereby gives NOTICE of his Complaint pursuant to Labor Code Sections 2698, *et seq.* against Defendant McKesson Medical-Surgical, Inc., a Virginia Corporation, and DOES 1 through 50, inclusive. Plaintiff intends to commence an action against Defendants pursuant to Labor Code sections 2698 *et seq.* Plaintiff hereby gives written notice by online submission to the Labor and Workforce Development Agency, and by certified mail to Defendant McKesson Medical-Surgical, Inc., via its agent for service of process.

Plaintiff was employed by Defendants as an hourly, non-exempt employee in Placer County. Plaintiff Colinayo was employed by Defendants in an hourly non-exempt position from October 2021 through April 2022. Specifically, he was employed in the position of cherry picker. He typically worked 5 days per week, and usually 8 hours per day. Not infrequently, he worked over 8 hours in a day or over forty hours in a week.

The group of aggrieved employees that Plaintiff seeks to represent is a group of non-exempt employees working with Defendants during the relevant time period. ("Aggrieved Employees") This notice is timely as it is provided within one year of the violations.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Plaintiff has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees working for Defendants regardless of their classification, job title, or whether they were hired directly or through a labor contractor or staffing agency.

Plaintiff has attached his Complaint and incorporates the allegations in the Complaint as though fully set forth herewith, setting out the specific provisions of the Labor Code that Plaintiff alleges have been violated, including the facts and relevant theories alleged against Defendants in the Complaint. Plaintiff sets forth additional facts and theories herein.

Failure to Keep Accurate Records

Plaintiff also contends that Defendants failed to keep accurate records as required by Wage Order 7-2001 and 9-2001, Labor Code 1174, and 1198. IWC Wage Order 7-2001 and 9-2001 require in pertinent part: Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period and applicable rate of pay....” Labor Code section 1174 also requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, its employees. On information and belief and based thereon, Defendants have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged in the complaint, including without limitation failing to keep records of meal periods and all wages earned at the proper rates. Defendants’ failure to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.

Failure to Properly Pay Sick Leave

In addition to the violation specified above and in the attached Complaint, Plaintiff alleges that Defendants failed to pay sick leave pay to Plaintiff and the Aggrieved Employees at the proper rate. Labor Code 246(i) provides: An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified. Labor Code section 246(1) provides: “For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations: (1) Paid sick leave for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.” In this case, Plaintiff alleges that Defendant failed to pay sick leave at the proper rate because it failed to take all forms of compensation, including incentives, bonuses, shift differentials, gift cards, vouchers, and other wages into account in calculating the regular rate. This constitutes a violation of Labor Code.

Unlawful Warehouse Conditions

Plaintiff further alleges that Defendants violated Labor Code section 1198, and Wage Order 9-2001, 1-2001, and 7-2001 by violating the temperature control guidelines set forth in Section 15 of the Wage Orders. In relevant part, Section 15 of the Wage Order states:

- (A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.
- (B) If excess heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60°F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at no less than 68°F.
- (C) A temperature of not less than 68°F shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

Plaintiff alleges that both he and the Aggrieved Employees were subjected to temperatures and conditions that violated the Wage Orders and Labor Code section 1198, as Defendants failed to comply with the mandates set forth in the law. Plaintiff and the Aggrieved Employees were subjected to extreme temperatures and lack of ventilation at Defendants' warehouses in violation of these mandates. Plaintiff asserts this claim on behalf of a subgroup of Aggrieved Employees that worked in Defendants' warehouses ("Aggrieved Warehouse Employees").

All Labor Code provisions and related allegations pertain to all entities or individuals named in the Complaint, even if not so specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

/s/ Christina M. Lucio

Christina M. Lucio, Esq.

Enclosed: Complaint

PROOF OF SERVICE, COUNTY OF ORANGE

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

On August 29, 2024, I served on the interested parties in this action the following document(s) entitled:

-FIRST AMENDED COMPLAINT

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

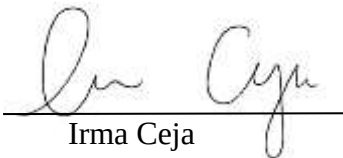
SERVICE LIST

Mia Farber, Esq.
Nicky Jatana, Esq.
Buck N. Haddix, Esq.
JACKSON LEWIS, P.C.
725 South Figueroa St, Suite 2500
Los Angeles, CA 90017-5408
Tel: 213-689-0404
Fax: 213-689-0430
Mia.farber@jacksonlewis.com
Nicky.jatana@jacksonlewis.com
Buck.Haddix@jacksonlewis.com

Attorneys for Defendant

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

Executed on August 29, 2024, at Irvine, California.


Irma Ceja