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7 Attorneys for JIWANN CHHINA, on behalf of himself
and others similarly situated.
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN DIEGO**

12 JIWANN CHHINA, on behalf of himself and
13 others similarly situated.

14 PLAINTIFF,

15
16 vs.

17
18 VITAS HEALTH SERVICES OF
CALIFORNIA, INC., a California corporation;
19 VITAS HEALTHCARE CORPORATION OF
CALIFORNIA, a Delaware corporation; VITAS
20 HEALTHCARE CORPORATION OF
CALIFORNIA, a Delaware corporation dba
21 VITAS HEALTHCARE, INC.; and DOES 1 to
22 100, Inclusive.

23 DEFENDANTS.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
09/27/2016 at 08:00:00 AM
Clerk of the Superior Court
By Tamara Parra, Deputy Clerk

Case No.: 37-2016-00033978-CU-OE-CTL

CLASS ACTION

**PLAINTIFF JIWANN CHHINA'S
COMPLAINT FOR DAMAGES,
PENALTIES AND RESTITUTION AND
FOR:**

1. **FAILURE TO PAY WAGES FOR
ALL HOURS WORKED AT
MINIMUM WAGE IN VIOLATION
OF LABOR CODE SECTIONS 1194
AND 1197**
2. **FAILURE TO PAY WAGES FOR
ALL OVERTIME HOURS
WORKED AT OVERTIME WAGE
IN VIOLATION OF LABOR CODE
SECTIONS 510**
3. **FAILURE TO PAY WAGES FOR
ALL HOURS WORKED AT
REGULAR WAGE RATE IN
VIOLATION OF LABOR CODE
SECTION 218.5**
4. **FAILURE TO PROVIDE MEAL
PERIODS IN VIOLATION OF
LABOR CODE SECTIONS 512,**

226.7

5. **FAILURE TO AUTHORIZE OR PERMIT REST PERIODS IN VIOLATION OF LABOR CODE SECTION 226.7**
6. **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226**
7. **FAILURE TO PAY FOR ALL REIMBURSABLE EXPENSES IN VIOLATION OF LABOR CODE SECTIONS 2802**
8. **UNFAIR BUSINESS PRACTICES, IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200, et seq.**
9. **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEY GENERAL ACT OF 2004 (“PAGA”), LABOR CODE SECTION 2698, et seq.**

DEMAND FOR JURY TRIAL

NOW COMES plaintiff JIWANN CHHINA (“Plaintiff”), on behalf of himself and all others similarly situated, who alleges and complains against defendant VITAS HEALTH SERVICES OF CALIFORNIA, INC., defendant VITAS HEALTHCARE CORPORATION OF CALIFORNIA, defendant VITAS HEALTHCARE CORPORATION OF CALIFORNIA, a Delaware corporation dba VITAS HEALTHCARE, INC., and DOES 1 to 100, inclusive, (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a class action lawsuit seeking unpaid wages and interest thereon for unpaid wages for all hours worked at minimum, regular, and overtime rates, including rounded or “shaved” time; failure to provide required meal periods; failure to authorize or permit required rest periods; statutory penalties for failure to provide accurate wage statements; failure to pay reimbursable expenses; injunctive relief and other equitable relief; reasonable attorney’s fees pursuant to

1 California Labor Code sections 226(e), 2802, 1194 and 2699(g)(1); Private Attorney General Act
2 (“PAGA”) penalties; costs; and interest brought on behalf of Plaintiff and others similarly situated.

3 **II. JURISDICTION AND VENUE**

4 2. This Court has jurisdiction over Plaintiff’s and the Class Members’ claims for unpaid
5 wages for all time worked at minimum, regular, and overtime wages, including rounded or “shaved”
6 time; unpaid meal period premium wages; unpaid rest period premium wages; statutory penalties for
7 failure to provide accurate wage statements; failure to pay reimbursable expenses; PAGA penalties;
8 and claims for injunctive relief and restitution under California Business & Professions Code
9 section 17200 *et seq.* for the following reasons: Defendants operate throughout California;
10 Defendants employed Plaintiff in San Diego County; Defendants operate at San Diego, CA; more
11 than two-thirds of the putative class members are California citizens; the principal violations of
12 California law occurred in California; no other class actions have been filed against Defendants in
13 the last three years alleging wage and hour violations; the conduct of Defendants forms a significant
14 basis for Plaintiff’s and the Class Members’ claims; and Plaintiff and the Class Members seek
15 significant relief from Defendants.

16 **III. PARTIES**

17 3. Plaintiff brings this action on behalf of himself and other members of the general
18 public similarly-situated. The named Plaintiff and the class of persons on whose behalf this action
19 is filed are current, former and/or future employees of Defendants who work as hourly employees.
20 At all times mentioned herein, the currently named Plaintiff is and was a resident of California and
21 was employed by Defendants as a licensed nurse, within the four years prior to the filing of the
22 complaint, in San Diego, CA.

23 4. Defendants employed Plaintiff as an hourly employee from approximately 2002
24 through the present.

25 5. Plaintiff is informed and believes and on that basis alleges that Defendants employed
26 Plaintiff and other hourly employees throughout the State of California and therefore its conduct
27 forms a significant basis of the claims asserted in this matter.

28 6. Plaintiff is informed and believes and thereon alleges that Defendant VITAS

1 HEALTH SERVICES OF CALIFORNIA, INC. is authorized to do business within the State of
2 California and is doing business in the State of California and/or that Defendants DOES 1 - 50 are,
3 and at all times relevant hereto were persons acting on behalf of VITAS HEALTH SERVICES OF
4 CALIFORNIA, INC.. in the establishment of, or ratification of, the aforementioned illegal wage and
5 hour practices or policies. Defendant VITAS HEALTH SERVICES OF CALIFORNIA, INC., is
6 incorporated in California, and therefore domiciled in California, operates in San Diego County and
7 employed Plaintiff and other putative class members in San Diego County at its business.

8 7. Plaintiff is informed and believes and thereon alleges that Defendant VITAS
9 HEALTHCARE CORPORATION OF CALIFORNIA is authorized to do business within the State
10 of California and is doing business in the State of California and/or that Defendants DOES 51 - 75
11 are, and at all times relevant hereto were persons acting on behalf of VITAS HEALTHCARE
12 CORPORATION OF CALIFORNIA in the establishment of, or ratification of, the aforementioned
13 illegal wage and hour practices or policies. Defendant VITAS HEALTHCARE CORPORATION
14 OF CALIFORNIA is incorporated in Delaware, operates in San Diego County and employed
15 Plaintiff and other putative class members in San Diego County at its business.

16 8. Plaintiff is informed and believes and thereon alleges that Defendant VITAS
17 HEALTHCARE CORPORATION OF CALIFORNIA, a Delaware corporation dba VITAS
18 HEALTHCARE, INC. is authorized to do business within the State of California and is doing
19 business in the State of California and/or that Defendants DOES 76 - 90 are, and at all times
20 relevant hereto were persons acting on behalf of Defendant VITAS HEALTHCARE
21 CORPORATION OF CALIFORNIA, a Delaware corporation dba VITAS HEALTHCARE, INC. in
22 the establishment of, or ratification of, the aforementioned illegal wage and hour practices or
23 policies. Defendant Defendant VITAS HEALTHCARE CORPORATION OF CALIFORNIA, a
24 Delaware corporation dba VITAS HEALTHCARE, INC. is incorporated in Delaware, operates in
25 San Diego County and employed Plaintiff and other putative class members in San Diego County at
26 its business.

27 9. Hereinafter, Defendant VITAS HEALTHCARE CORPORATION OF
28 CALIFORNIA, Defendant VITAS HEALTH SERVICES OF CALIFORNIA, INC., Defendant

VITAS HEALTHCARE CORPORATION OF CALIFORNIA, a Delaware corporation dba VITAS HEALTHCARE, INC., and Does 1 to 100, shall hereinafter be referred to as "Defendants."

10. Plaintiff is informed and believes and thereon alleges that Defendants DOES 91 - 100 are individuals unknown to Plaintiff. Each of the individual Defendants is sued individually in his or her capacity as an agent, shareholder, owner, representative, manager, supervisor, independent contractor and/or employee of each Defendant and participated in the establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.

11. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff sues said defendants by said fictitious names, and will amend this complaint when the true names and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously named Defendants is in some manner responsible for the events and allegations set forth in this complaint.

12. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each defendant was an employer, was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other defendants so as to be liable for their conduct with respect to the matters alleged in this complaint. Plaintiff is further informed and believes and thereon alleges that each defendant acted pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other defendants. As used in this complaint, "Defendants" means "Defendants and each of them," and refers to the Defendants named in the particular cause of action in which the word appears and includes VITAS HEALTH SERVICES, INC.; VITAS HEALTHCARE CORPORATION OF CALIFORNIA; VITAS HEALTHCARE CORPORATION OF CALIFORNIA, a Delaware corporation dba VITAS HEALTHCARE, INC.; and DOES 1 to 100, inclusive.

1 13. At all times mentioned herein, each Defendant was the co-conspirator, agent, servant,
2 employee, and/or joint venturer of each of the other defendants and was acting within the course and
3 scope of said conspiracy, agency, employment, and/or joint venture and with the permission and
4 consent of each of the other Defendants.

5 14. Plaintiff makes the allegations in this complaint without any admission that, as to any
6 particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff
7 reserves all of Plaintiff rights to plead in the alternative.

8 **IV. DESCRIPTION OF ILLEGAL PAY PRACTICES**

9 15. Pursuant to the applicable Industrial Welfare Commission (“IWC”) Wage Order
10 (“Wage Order”), codified at California Code of Regulations title 8, section 11050, Defendants are
11 employers of Plaintiff within the meaning of the applicable Wage Order and applicable California
12 Labor Code sections. Therefore, each of these Defendants is jointly and severally liable for the
13 wrongs complained of herein in violation of the Wage Order and the California Labor Code.

14 16. **Failure to pay wages for all hours worked at the legal minimum rate, regular**
15 **rate, and/or overtime rate:** Defendants employed many of their employees, including Plaintiff, as
16 non-exempt employees. In California, an employer is required to pay hourly non-exempt employees
17 for all “hours worked,” which includes all time that an employee is under control of the employer
18 and all time the employee is suffered and permitted to work. This includes the time an employee
19 spends, either directly or indirectly, performing services which inure to the benefit of the employer.

20 17. Defendants “rounded” down or “shaved” its employees’ on-the-clock time by
21 automatically capping and/or deducting minutes from the employees’ total time worked. For
22 example, Plaintiff, and putative class members, were not fully compensated for drive time in
23 between multiple work assignments. In addition, Defendants as a matter of practice and policy,
24 capped time allocated to many activities such as, but not limited to shift transfer periods wherein
25 nurses had to meet and confer with nurses taking over the care of the same patient in need of
26 constant care, despite having actual and constructive knowledge that nurses required more time to
27 complete this activity, preparation time, and reporting time for patient deaths. Defendants capped

1 compensable time at anywhere between 1 and 5 minutes, whereas the activities could take, on
2 average, about 15 to 20 minutes.

3 18. California Labor Code sections 1194 and 1197 require an employer to compensate
4 employees for all “hours worked” at least at a minimum wage rate of pay as established by the
5 Industrial Welfare Commission (“IWC”) and the Wage Orders.

6 19. California Labor Code Section 510 and the applicable wage order requires that all
7 time over eight hours, and under twelve hours, to be compensated at time and a half.

8 20. California Labor Code Section 218.5 permits an employee to bring an action for an
9 employer’s failure to pay its employees at the agreed-upon or contractual rate.

10 21. In addition, Wage Order 5 mandates a reporting time shift premium when an
11 employee is required to report to work, but is not afforded the opportunity to work his regular
12 scheduled shift. As compensation for this premium, Plaintiff and similarly situated members are
13 entitled to ½ the compensation they would have obtained had they been put to work in accordance
14 to their regular schedule of eight hours.

15 22. Despite the fact that California law requires employers to pay employees for all hours
16 worked at least at a minimum wage, regular, and overtime rates, Defendants suffered, permitted and
17 required hourly employees to be subject to Defendants’ control without paying appropriate wage
18 rates for that time. This resulted in hourly employees working time for which they were not
19 compensated any wages, in violation of California Labor Code sections 1194, 1197, 510, 218.5, and
20 the Wage Orders.

21 23. **Failure to pay hourly employees wages to compensate them for workdays**
22 **Defendants failed to provide required meal periods:** Defendants often employed hourly
23 employees, including the named Plaintiff and all others similarly-situated, for shifts longer than six
24 hours in length, and at times, ten hours in length.

25 24. California law requires an employer to provide an employee an uninterrupted meal
26 period of no less than 30-minutes in which the employee is relieved of all duties and the employer
27 relinquishes control over the employee’s activities prior to the employee’s sixth hour of work, and
28 the tenth hour of work. Cal. Lab. Code §§ 226.7, 512; Wage Order §11; *Brinker Rest. Corp. v.*

1 *Super Ct.(Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a
2 work period of more than 10 hours per day without providing the employee with a second such meal
3 period of not less than 30 minutes prior to the start of the eleventh hour of work. *Id.* If the
4 employee is not relieved of all duty during a meal period, the meal period shall be considered an “on
5 duty” meal period and counted as time worked. A paid “on duty” meal period is only permitted
6 when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the
7 parties have a written agreement agreeing to only one on-duty meal period. As to the 2nd on-duty
8 meal period, it is not permitted if the first one was waived as a result of an on-duty meal waiver.

9 25. If the employee is not free to leave the work premises or worksite during the meal
10 period, even if the employee is relieved of all other duty during the meal period, the employee still is
11 subject to the employer's control and the meal period is counted as time worked.

12 26. If an employer fails to provide an employee a meal period in accordance with the
13 law, the employer must pay the employee one hour of pay at the employee’s regular rate of pay for
14 each work day that a legally required meal period was not provided or was not duty-free. *Id.*

15 27. Plaintiff and similarly situated employees would work on workdays in shifts long
16 enough to entitle them to both first and second meal periods under California law. Despite the fact
17 that California law requires employers to provide employees with a duty free meal period when an
18 employee’s work shift is a minimum of five hours, Defendants employed a policy and procedure
19 that did not provide for a full 30-minute first meal period for each five hours of work.

20 28. Plaintiff and similarly situated employees were purportedly required to take two on-
21 duty meal periods. Moreover, Plaintiff and similarly situated members were forced to be on duty,
22 despite the wage order’s requirement that the agreement be voluntary.

23 29. Plaintiff and similarly situated employees also would work on workdays in shifts
24 long enough to entitle them to second meal periods under California law. Defendants employed a
25 policy and procedure that did not provide at all for a second 30-minute meal period when the
26 employees worked shifts of more than ten hours. Indeed, Wage Order 5 categorically prohibits two
27 on-duty meal periods.

28 30. Defendants failed to pay premium wages to Plaintiff and similarly situated

1 employees to compensate them for each workday the employees did not receive all legally required
2 duty-free meal periods. Defendants employed policies and procedures which ensured employees did
3 not receive any premium wages to compensate them for the workdays in which they did not receive
4 all legally required meal periods.

5 31. This practice resulted in Plaintiff and all other similarly situated employees not
6 receiving premium wages to compensate them for workdays which Defendants did not provide them
7 with either first or second duty free meal periods, or both, in compliance with California law.

8 32. **Failure to pay hourly employees wages to compensate them for workdays**
9 **Defendants failed to provide required rest periods:** Defendants often employed hourly
10 employees, including the named Plaintiff and all others similarly-situated, for shifts at least three
11 and one-half (3.5) hours in length.

12 33. California law requires an employer to provide an employee a rest period of ten (10)
13 net minutes for every four hours worked, “which insofar as practicable shall be in the middle of
14 each work period.” Cal. Lab. Code §226.7; Wage Order §12. Thus, employees are entitled to 10
15 minutes rest for shifts from three and one-half to six hours in length, 20 minutes for shifts between
16 six and ten hours in length, 30 minutes for shifts between 10 and 14 hours in length, and so on. *See*
17 *Brinker, supra*.

18 34. If the employer fails to provide a required rest period, the employer must pay the
19 employee one hour of pay at the employee’s regular rate of compensation for each work day the
20 employer did not provide all legally required rest periods. *Id.*

21 35. Defendants employed policies and procedures which ensured Plaintiff and similarly
22 situated employees would not receive all legally required rest periods. Specifically, Plaintiff and
23 similarly situated employees were told that they could not leave the premises and were required to
24 remain on-duty at all times. Moreover, Defendants did not even purportedly authorize and permit
25 rest periods in accordance to the applicable Wage Order’s strict timing requirements.

26 36. Defendants also employed policies and procedures which ensured Plaintiff and
27 similarly situated employees did not receive any premium wages to compensate them for workdays
28 that they did not receive all legally required rest periods.

1 37. These practices resulted in Plaintiff and all other similarly situated employees not
2 receiving wages to compensate them for workdays which Defendants did not provide them with all
3 rest periods required by California law.

4 38. **Pay Stub Violations:** California Labor Code section 226(a) provides, *inter alia*, that,
5 upon paying an employee his or her wages, the employer must “furnish each of his or her employees
6 ... an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
7 employee, except for any employee whose compensation is solely based on a salary and who is
8 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
9 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
10 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
11 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
12 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
13 name of the employee and his or her social security number, (8) the name and address of the legal
14 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee.”

16 39. Defendants failed to provide accurate wage and hour statements to Plaintiff and
17 similarly situated employees who were subject to Defendants’ control for items such as, but not
18 limited to uncompensated time, gross wages earned, corresponding and actual hourly rates for each
19 activity, amongst other items.

20 40. **Failure to Pay California Employees All Reimbursable Expenses:** An employer is
21 required to pay reasonable reimbursable expenses for all duties required by the employer and/or in
22 carrying out the employer’s orders. Defendants failed to pay for car usage related expenses and for
23 cell phone usage. For example, Defendants only reimbursed on mileage, and at a lower rate of 40
24 cents, for trips that exceeded at least 30 miles. As to reimbursable expenses related to cell phone
25 usage—an item required by the employer to stay in communication with the main office in addition
26 for the purpose of maintaining time records—Defendant did not properly pay for a pro rata usage for
27 all time worked by Plaintiff and similarly situated members.

28 41. Because Defendants failed to pay Plaintiff and other similarly situated employees all

1 their earned reimbursable expenses, Defendants failed to pay those employees timely after each
2 work period.

3 **V. CLASS DEFINITIONS AND CLASS ALLEGATIONS**

4 42. Plaintiff brings this action on behalf of himself, on behalf of all others similarly
5 situated, and on behalf of the General Public, and as a member of a Class defined as follows:

6 A. **Minimum Wage Class:** All current and former hourly employees employed
7 by Defendants in California at any time within the four years prior to the filing of the initial
8 complaint in this action and through the date notice is mailed to a certified class who were not paid
9 at least at minimum wage for all time they were subject to Defendants' control.

10 B. **Regular Wage Class:** All current and former hourly employees employed by
11 Defendants in California at any time within the four years prior to the filing of the initial complaint
12 in this action and through the date notice is mailed to a certified class who were not paid at least at
13 their regular wage rate for all time they were subject to Defendants' control.

14 C. **Overtime Wage Class:** All current and former hourly employees employed
15 by Defendants in California at any time within the four years prior to the filing of the initial
16 complaint in this action and through the date notice is mailed to a certified class who were not paid
17 at least at their overtime wage rate for all time they were subject to Defendants' control.

18 D. **Meal Period Class:** All current and former hourly employees employed by
19 Defendants in California at any time within the four years prior to the filing of the initial complaint
20 in this action and through the date notice is mailed to a certified class who worked shifts of at least
21 six hours yet Defendants did not provide required duty-free meal periods of not less than 30 minutes
22 prior to the start of their sixth hour of work, and/or who worked shifts more than ten hours yet
23 Defendants did not provide required duty-free meal periods of not less than 30 minutes prior to the
24 start of their eleventh hour of work.

25 E. **Rest Period Class:** All current and former hourly employees employed by
26 Defendants in California at any time within the four years prior to the filing of the initial complaint
27 in this action and through the date notice is mailed to a certified class who worked at least three and
28 one-half (3.5) or more hours in day who were not authorized to and did not receive required rest

1 periods of ten net minutes rest time for every four hours worked between three and one-half and six
2 hours, six and ten hours, or ten and fourteen hours.

3 F. **Wage Statement Class:** All current and former hourly employees employed
4 by Defendants in California at any time within the one year prior to the filing of the initial complaint
5 in this action and through the date notice is mailed to a certified class who received inaccurate or
6 incomplete wage and hour statements.

7 G. **Reimbursement Class:** All current and former hourly employees employed
8 by Defendants in California at any time within the four years prior to the filing of the initial
9 complaint in this action and through the date notice is mailed to a certified class who did not receive
10 reimbursement for all expenses incurred as a result of their job duties.

11 H. **California Class:** All aforementioned classes are here collectively referred to
12 as the “California Class.”

13 43. There is a well defined community of interest in the litigation and the classes are
14 ascertainable:

15 A. **Numerosity:** While the exact number of class members in each class is
16 unknown to plaintiff at this time, the Plaintiff classes are so numerous that the individual joinder of
17 all members is impractical under the circumstances of this case.

18 B. **Common Questions Predominate:** Common questions of law and fact exist
19 as to all members of the Plaintiff classes and predominate over any questions that affect only
20 individual members of each class. The common questions of law and fact include, but are not
21 limited to:

22 i. Whether Defendants violated California Labor Code sections 1194
23 and 1197 by not paying employees’ wages at a minimum wage rate for all time that the Minimum
24 Wage Class Members were subject to Defendants’ control but were not paid;

25 ii. Whether Defendants violated California Labor Code sections 218.5 by
26 not paying employees’ wages at their regular wage rate for all time that the Regular Wage Class
27 Members were subject to Defendants’ control but were not paid;

28 iii. Whether Defendants violated California Labor Code sections 510 by

1 not paying employees' wages at their overtime wage rate for all time that the Overtime Wage Class
2 Members were subject to Defendants' control but were not paid;

3 iv. Whether Defendants violated California Labor Code sections 512 and
4 226.7, as well as the applicable Wage Order, by employing Meal Period Class Members without
5 providing all their required meal periods or paying meal period premium wages;

6 v. Whether Defendants violated the Wage Order and California Labor
7 Code section 226.7 and the applicable Wage Order by employing Rest Period Class Members
8 without providing all their required rest periods or paying rest period premium wages;

9 vi. Whether Defendants failed to provide the Wage Statement Class
10 Members with accurate itemized statement at the time they received their itemized statements;

11 vii. Whether Defendants failed to provide the Reimbursement Class
12 Members with all of their reimbursable expenses;

13 viii. Whether Defendants committed unlawful business acts or practice
14 within the meaning of Business and Professions Code section 17200 *et seq.*;

15 ix. Whether Class Members are entitled to unpaid wages, penalties and
16 other relief pursuant to their claims;

17 x. Whether, as a consequence of Defendant's unlawful conduct, the Class
18 Members are entitled to restitution, and/or equitable relief; and

19 xi. Whether Defendant's affirmative defenses, if any, raise any common
20 issues of law or fact as to Plaintiff and as to the Class Members as a whole.

21 C. **Typicality:** Plaintiff's claims are typical of the claims of the class members
22 in each of the classes. Plaintiff and the members of the Minimum Wage Class sustained damages
23 arising out of Defendants' failure to pay wages at least at minimum, regular, and overtime wage rate
24 for all time the employees were subject to Defendants' control. Plaintiff and the members of the
25 Meal Period Class sustained damages arising out of Defendants' failure to provide employees all
26 legally required meal periods and failure to pay meal period premium wages as compensation.
27 Plaintiff and the members of the Rest Period Class sustained damages arising out of Defendants'
28 failure to provide employees all legally required rest periods and failure to pay rest period premium

1 wages as compensation. Plaintiff and the members of the Wage Statement Class sustained damages
2 arising out of Defendants' failure to furnish them with accurate itemized wage statements in
3 compliance with California Labor Code section 226. Plaintiff and the members of the Reimbursable
4 Class sustained damages arising out of Defendants' failure to reimburse for all expenses in carrying
5 out the duties of employment.

6 D. **Adequacy of Representation:** Plaintiff will fairly and adequately protect the
7 interests of the members of each class. Plaintiff has no interest that is adverse to the interests of the
8 other class members.

9 E. **Superiority:** A class action is superior to other available means for the fair
10 and efficient adjudication of this controversy. Because individual joinder of all members of each
11 class is impractical, class action treatment will permit a large number of similarly situated persons to
12 prosecute their common claims in a single forum simultaneously, efficiently, and without the
13 unnecessary duplication of effort and expense that numerous individual actions would engender.
14 The expenses and burdens of individual litigation would make it difficult or impossible for
15 individual members of each class to redress the wrongs done to them, while important public
16 interests will be served by addressing the matter as a class action. The cost to and burden on the
17 court system of adjudication of individualized litigation would be substantial, and substantially
18 more than the costs and burdens of a class action. Individualized litigation would also present the
19 potential for inconsistent or contradictory judgments.

20 F. **Public Policy Consideration:** Employers throughout the state violate wage
21 and hour laws. Current employees often are afraid to assert their rights out of fear of direct or
22 indirect retaliation. Former employees fear bringing actions because they perceive their former
23 employers can blacklist them in their future endeavors with negative references and by other means.
24 Class actions provide the class members who are not named in the complaint with a type of
25 anonymity that allows for vindication of their rights.

26 **FIRST CAUSE OF ACTION**

27 **FAILURE TO PAY WAGES FOR ALL HOURS OF WORK AT THE LEGAL MINIMUM**

28 **WAGE RATE IN VIOLATION OF LABOR CODE SECTIONS 1194 AND 1197**

PLAINTIFF'S CLASS ACTION COMPLAINT FOR DAMAGES, PENALTIES, AND RESTITUTION

(As Against all Defendants and DOE Defendants by the Minimum Wage Class)

44. Plaintiff hereby incorporates by reference paragraphs 1-43 above, as if fully set herein by reference.

45. At all times relevant to this Complaint, Plaintiff and the members of the Minimum Wage Class were hourly employees of Defendants.

46. Pursuant to Labor Code sections 1194, 1197, and Wage Orders, Plaintiff and the Minimum Wage Class are entitled to receive wages for all hours worked, i.e., all time subject to Defendants' control, and those wages must be paid at least at the minimum wage rate in effect during the time the employees earned the wages.

47. Defendants' payroll policies and procedures required employees of the Minimum Wage Class to be engaged, suffered, or permitted to work without being paid wages for all of the time in which they were subject to Defendants' control.

48. Specifically, Defendants "rounded" down or "shaved" its employees' work period time by automatically capping compensable time—regardless of amount of time worked—and by denying pay for activities such as driving time, pre and post-preparation activities, reporting of death activities, amongst other activities.

49. As a result of Defendants' unlawful conduct, Plaintiff and members of the Minimum Wage Class have suffered damages in an amount subject to proof, to the extent that they were not paid wages at a minimum wage rate for all hours worked.

50. Pursuant to California Labor Code Sections 1194 and 1194.2, Plaintiff and the Minimum Wage Class members are entitled to recover unpaid minimum wage, interest thereon, liquidated damages in the amount of their unpaid minimum wage, and attorney's fees and costs.

SECOND CAUSE OF ACTION

**FAILURE TO PAY WAGES FOR ALL HOURS OF WORK AT THE LEGAL OVERTIME
WAGE RATE IN VIOLATION OF LABOR CODE SECTIONS 510**

(As Against all Defendants and DOE Defendants by the Overtime Wage Class)

51. Plaintiff hereby incorporates by reference paragraphs 1-50 above, as if fully set herein by reference.

1 52. At all times relevant to this Complaint, Plaintiff and the members of the Overtime
2 Wage Class were hourly employees of Defendants.

3 53. Pursuant to Labor Code sections 510, and Wage Orders, Plaintiff and the Overtime
4 Wage Class are entitled to receive overtime wages for all overtime hours worked, i.e., all time
5 subject to Defendants' control in excess of eight hours in one day, and/or in excess of 40 in one
6 week.

7 54. As a result of Defendants' unlawful conduct, Plaintiff and members of the Overtime
8 Wage Class have suffered damages in an amount subject to proof, to the extent that they were not
9 paid wages at a overtime wage rate for all overtime hours worked.

10 55. Pursuant to California Labor Code Sections 1194 and 1194.2, Plaintiff and the
11 Overtime Wage Class members are entitled to recover unpaid overtime wages, interest thereon,
12 liquidated damages in the amount of their unpaid minimum wage, and attorney's fees and costs.

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14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY WAGES FOR ALL HOURS OF WORK AT THE REGULAR WAGE**
16 **RATE IN VIOLATION OF LABOR CODE SECTIONS 218.5**

17 **(As Against all Defendants and DOE Defendants by the Overtime Wage Class)**

18 56. Plaintiff hereby incorporates by reference paragraphs 1-55 above, as if fully set
19 herein by reference.

20 57. At all times relevant to this Complaint, Plaintiff and the members of the Regular
21 Wage Class were hourly employees of Defendants.

22 58. Pursuant to Labor Code sections 218.5, Plaintiff and the Regular Wage Class are
23 entitled to receive regular wages for all hours worked, i.e., all time subject to Defendants' control in
24 accordance to their compensation agreement.

25 59. Wage order 5 further provides, "Each workday an employee is required to report for
26 work and does report, but is not put to work or is furnished less than half said employee's usual or
27 scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in
28 no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of

1 pay, which shall not be less than the minimum wage.” Plaintiff and similarly situated members were
2 required to report to work, but in fact, were not put to work. As such, they are entitled to reporting
3 time wages no more than 4 hours per day, no less than 2 hours per day, at their regular rate, when
4 this happened.

5 60. As a result of Defendants’ unlawful conduct, Plaintiff and members of the Regular
6 Wage Class have suffered damages in an amount subject to proof, to the extent that they were not
7 paid wages at the regular wage rate for all hours worked.

8 61. Pursuant to California Labor Code Sections 218.5, Plaintiff and the Regular Wage
9 Class members are entitled to recover unpaid wages, interest thereon, and attorney’s fees and costs.

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13 **FOURTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF** 15 **CALIFORNIA LABOR CODE SECTIONS 512 AND 226.7 AND THE WAGE ORDER**

16 **(As Against all Defendants and DOE Defendants by the Meal Period Class)**

17 62. Plaintiff incorporates paragraphs 1 through 61 above as though fully set forth herein.

18 63. At all times relevant to this Complaint, Plaintiff and the members of the Meal Period
19 Class were hourly employees of Defendants, covered by California Labor Code sections 512 and
20 226.7 and the Wage Order.

21 64. California law requires an employer to provide an employee an uninterrupted meal
22 period of no less than 30-minutes in which the employee is relieved of all duties and the employer
23 relinquishes control over the employee’s activities no later than the employee’s sixth hour of work.
24 Cal. Lab. Code §§ 226.7, 512; Wage Order §11; *Brinker Rest. Corp. v. Super Ct.(Hohnbaum)*
25 (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than
26 10 hours per day without providing the employee with a second such meal period of not less than 30
27 minutes by no later than the start of the eleventh hour of work. *Id.* If the employee is not relieved
28 of all duty during a meal period, the meal period shall be considered an “on duty” meal period and

1 counted as time worked. A paid “on duty” meal period is only permitted when: (1) the nature of the
2 work prevents an employee from being relieved of all duty; and (2) the parties have a written
3 *voluntary* agreement agreeing to on duty meal periods. More importantly, under the applicable wage
4 order, an employer cannot require two “on-duty” meal periods.

5 65. Plaintiff and similarly situated employees worked in shifts long enough to entitle
6 them to first and second meal periods under California law. Defendants failed to provide employees
7 a full 30-minute meal period for each five hour period of work as required by law.

8 66. Specifically, Defendants employed a policy and procedure that did not provide for a
9 full 30-minute first meal period for each five hours of work as Plaintiff and similarly situated
10 members were told that they were required to waive their off-duty meal periods. Thus, there was no
11 voluntary agreement.

12 67. Defendants further required two meal periods, all on-duty, in violation of Wage
13 Order 5.

14 68. Plaintiff and similarly situated employees would work on workdays in shifts long
15 enough to entitle them to second meal periods under California law. Defendants employed a policy
16 and practice that failed to provide for a second 30-minute meal period when the employees worked
17 shifts of more than ten hours.

18 69. Defendants also failed to provide premium wages to Plaintiff and similarly situated
19 employees to compensate them for workdays they did not receive their legally required duty free
20 meal period. Defendants employed policies and procedures which ensured employees would not
21 receive full 30-minute legally required meal periods. Defendants employed policies and procedures
22 which ensured employees did not receive premium wages to compensate them for workdays that
23 they did not receive either a first or a second full meal period, or both. This practice resulted in
24 Plaintiff and all other similarly situated employees not receiving premium wages to compensate
25 them for workdays which Defendants did not provide them with all required meal periods, in
26 compliance with California law.

27 70. Defendants’ policies and procedures prevented Plaintiff and other Meal Period Class
28 members from receiving all legally required meal periods or Defendants from providing such meal

1 periods to Plaintiff and other Meal Period Class Members during workdays the employees worked
2 more than six hours and/or more than ten hours in one shift.

3 71. Defendants employed policies and procedures which ensured Plaintiff and similarly
4 situated employees did not receive any wages to compensate them for workdays that they did not
5 receive all legally required meal periods.

6 72. Defendants' unlawful conduct alleged herein occurred in the course of employment
7 of Plaintiff and all others similarly situated and such conduct has continued through the filing of this
8 Complaint.

9 73. Because Defendants failed to provide proper meal periods, they are liable to Plaintiff
10 and the Meal Period Class Members for one hour of additional pay at the regular rate of
11 compensation for each workday that the proper meal period was not provided, pursuant to California
12 Labor Code section 226.7 and the Wage Order.

13 74. Plaintiff, on behalf of himself and the Meal Period Class, seeks damages and all
14 other relief allowable, including a meal period premium wage for each workday Defendants failed
15 to provide all required 30-minute uninterrupted meal periods, plus pre-judgment interest.

16 75. Thus, Plaintiff and Meal Period Class Members are entitled to one hour of pay for
17 each workday Defendants did not provide them all required meal periods, plus pre-judgment
18 interest.

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CALIFORNIA**

21 **LABOR CODE SECTION 226.7 AND THE WAGE ORDER**

22 **(As Against all Defendants and DOE Defendants by the Rest Period Class)**

23 76. Plaintiff incorporates paragraphs 1 through 75 above as though fully set forth herein.

24 77. At all times relevant to this Complaint, Plaintiff and the members of the Rest Period
25 Class were employees of Defendants, covered by California Labor Code section 226.7 and the
26 Wage Order.

27 78. California law requires an employer to authorize or permit an employee to take a rest
28 period of ten (10) net minutes for every four hours worked. Cal. Lab. Code §226.7; Wage Order

1 §12. Such rest periods must be in the middle of the four-hour period “insofar as practicable.” *Id.* If
2 the employer fails to provide any required rest period, the employer must pay the employee one hour
3 of pay at the employee’s regular rate of compensation for each work day the employer did not
4 provide at least one legally required rest period. *Id.*

5 79. Defendants failed to provide Plaintiff and the Class Members all required rest
6 periods and failed to pay premium wages to Plaintiff and similarly situated employees to
7 compensate them for each workday they did not receive all legally required rest periods. Defendants
8 employed policies and procedures which ensured Plaintiff and similarly situated employees would
9 not receive all legally required rest periods. Specifically, Defendants told Plaintiff and similarly
10 situated members that they had to remain on-premises and on duty at all times.

11 80. Moreover, as a separate basis for failing to authorize and permit appropriate rest
12 breaks, Defendants failed to authorize and permit rest breaks at a rate of one break for every four
13 hours of work, or “major fraction thereof.”

14 81. Defendants employed policies and procedures which ensured Plaintiff and similarly
15 situated employees did not receive any premium wages to compensate them for workdays that they
16 did not receive all legally required rest periods.

17 82. This practice resulted in Defendants failing to pay Plaintiff and all other similarly
18 situated employees premium wages to compensate them for workdays in which Defendants did not
19 provide the employees with all required rest periods, in violation of California law.

20 83. Plaintiff, on behalf of himself and on behalf of the Rest Period Class, seeks damages
21 and all other relief allowable including: rest period premium wages for each workday the employee
22 was not provided with all required rest periods of ten net minutes; and prejudgment interest.

23 84. Pursuant to California Labor Code section 226.7 and the Wage Order, Plaintiff and
24 the Rest Period Class Members are entitled to one hour of pay for each workday Defendants failed
25 to provide all required rest periods, plus pre-judgment interest.

26 **SIXTH CAUSE OF ACTION**

27 **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS, IN**
28 **VIOLATION OF LABOR CODE SECTION 226**

(As Against all Defendants and DOE Defendants by the Wage Statement Class)

85. Plaintiff incorporates paragraphs 1 through 84 of this complaint as if fully alleged herein.

86. At all times relevant to this Complaint, Plaintiff and the other members of the Wage Statement Class were hourly employees of Defendants, covered by California Labor Code section 226.

87. Pursuant to California Labor Code section 226, subdivision (a), Plaintiff and the other members of the class were entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage statement accurately stating the following:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

88. Defendants' illegal wage practices, including but not limited to Defendants' failure to pay at least appropriate wages for all time worked and failure to pay meal and rest period premium wages resulted in Defendant providing its hourly employees with inaccurate itemized wage statements in violation of California Labor Code section 226.

89. Defendants provided Plaintiff and members of the Class with itemized statements which stated inaccurate information including, but not limited to, the gross and net pay, and all applicable hourly rates and earnings at each rate.

90. Defendants' failure to provide Plaintiff and members of the Reimbursement Class

1 with accurate wage statements was knowing and intentional. Defendants had the ability to provide
2 Plaintiff and members of the Class with accurate wage statements but intentionally provided wage
3 statements it knew were not accurate. Defendants knowingly and intentionally put in place practices
4 which deprived employees of wages and resulted in Defendants' knowing and intentional provision
5 of inaccurate wage statements. These practices included Defendants' failure to include all hours
6 worked and all wages due.

7 91. As a result of Defendants' unlawful conduct, Plaintiff and members of the Class have
8 suffered injury. The absence of accurate information on their wage statements has prevented earlier
9 challenges to Defendants' unlawful pay practices, will require discovery and mathematical
10 computations to determine the amount of wages owed, and will cause difficulty and expense in
11 attempting to reconstruct time and pay records. Defendants' conduct led to the submission of
12 inaccurate information about wages and amounts deducted from wages to state and federal
13 government agencies. As a result, Plaintiff and similarly situated employees are required to
14 participate in this lawsuit and create more difficulty and expense for Plaintiff and similarly situated
15 employees from having to reconstruct time and pay records than if Defendants had complied with
16 their legal obligations.

17 92. Pursuant to California Labor Code section 226(e), Plaintiff and members of the
18 Wage Statement Class are entitled to recover fifty dollars per employee for the initial pay period in
19 which a Section 226 violation occurred and one hundred dollars per employee per violation for each
20 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

21 93. Pursuant to California Labor Code Section 226(h), Plaintiff and members of the
22 Wage Statement Class are entitled to bring an action for injunctive relief to ensure Defendants'
23 compliance with California Labor Code section 226(a). Injunctive relief is warranted because
24 Defendants continue to provide currently employed members of the Class with inaccurate wage
25 statements in violation of California Labor Code section 226(a) and currently employed members of
26 the Class have no adequate legal remedy for the continuing injuries that will be suffered as a result
27 of Defendants' ongoing unlawful conduct. Injunctive relief is the only remedy available for ensuring
28 Defendants' compliance with California Labor Code section 226(a).

1 94. Pursuant to California Labor Code sections 226(e) and 226(h), Plaintiff and members
2 of the Wage Statement Class are entitled to recover the full amount of penalties due under Section
3 226(e), reasonable attorneys' fees, and costs of suit.

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7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO PAY PAY REIMBURSABLE EXPENSES, IN VIOLATION OF LABOR**

9 **CODE SECTION 2802**

10 **(As Against all Defendants and DOE Defendants by the Waiting Time Class)**

11 95. Plaintiff incorporates paragraphs 1 through 94 of this complaint as if fully alleged
12 herein.

13 96. At all times relevant to this Complaint, Plaintiff and the other members of the
14 Reimbursable Class were employees of Defendants, covered by California Labor Code section
15 2802.

16 97. Pursuant to California Labor Code sections 2802, Plaintiff and members of the
17 Reimbursement Class were entitled to be reimbursed for all reasonable expenses associated with
18 carrying out orders by their employer and/or carrying out the duties assigned by their employers.

19 98. Defendants failed to pay Plaintiff and members of the Reimbursement Class for all
20 reimbursement of cell-phone usage, as Defendants required Plaintiff and members of the Class to
21 use their phone for gps purposes and for recording time entries.

22 99. In addition, Defendants failed to reimburse Plaintiff and members of the
23 Reimbursement class for all vehicle-related usage, including but not limited to full reimbursement
24 for mileage, wear and tear, gas, and insurance expenses associated with making trips on behalf of
25 their employer, and in carrying out multiple assignments issued by their employer.

26 100. Defendants' failure to provide Plaintiff and members of the Reimbursement Class
27 with full reimbursement for all reasonable expenses associated with carrying out their duties
28 required that Plaintiff and similarly situated members subsidize and/or carry the burden of business

1 expenses in violation of Labor Code Section 2802.

2 101. As a result of Defendants' unlawful conduct, Plaintiff and members of the Class have
3 suffered injury in that they were not completely reimbursed as mandated by California law.

4 102. Pursuant to California Labor Code section 2802, Plaintiff and members of the
5 Reimbursement Class are entitled to recover the full amount of reimbursable expenses due, in
6 addition to reasonable attorneys' fees, and costs of suit.

7 **EIGHTH CAUSE OF ACTION**

8 **UNFAIR COMPETITION IN VIOLATION OF CALIFORNIA BUSINESS AND**
9 **PROFESSIONS CODE SECTION 17200**

10 **(Against All Defendants and Doe Defendants by the California Class)**

11 103. Plaintiff incorporates paragraphs 1 through 102 of this complaint as if fully alleged
12 herein.

13 104. The unlawful conduct of Defendants alleged herein constitutes unfair competition
14 within the meaning of California Business and Professions Code Section 17200. This unfair conduct
15 includes Defendants' use of policies and procedures which resulted in: failing to pay employees at
16 least at the appropriate rates for all hours which they worked; failure to provide all required meal
17 periods or pay meal period premium wages; failure to authorize or permit, or provide, all required
18 rest periods or pay rest period premium wages; failure to provide accurate wage and hour
19 statements; and failure to reimburse all reasonable expenses. Due to their unfair and unlawful
20 business practices in violation of the California Labor Code, Defendants have gained a competitive
21 advantage over other comparable companies doing business in the State of California that comply
22 with their obligations to pay employees for all hours worked at appropriate rates, to provide meal
23 periods or pay meal period premium wages, to authorize or permit rest periods or pay rest period
24 premium wages, to provide accurate wage and hour statements, and to pay reimbursable expenses.

25 105. As a result of Defendants' unfair competition as alleged herein, Plaintiff and
26 members of the Minimum Wage Class, Regular Rate Class, Overtime Rate Class, Meal Period
27 Class, Rest Period Class, Wage Statement Class, and Reimbursement Class have suffered injury in
28 fact and lost money or property, as described in more detail above.

106. Pursuant to California Business and Professions Code Section 17203, Plaintiff and members of these classes are entitled to restitution of all wages and other monies rightfully belonging to them that Defendants failed to pay and wrongfully retained by means of their unlawful and unfair business practices. Plaintiff also seeks an injunction against Defendants on behalf of the California Class enjoining Defendants, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies and patterns set forth herein.

NINTH CAUSE OF ACTION

**CIVIL PENALTIES FOR LABOR CODE VIOLATIONS PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT OF 2004**

(California Labor Code §§2698 *et seq.*)

**(By Plaintiffs, on behalf of themselves and all aggrieved employees, against all
Defendants and DOES 1 through 100)**

107. Plaintiff incorporates paragraphs 1 through 106 of this complaint as if fully alleged herein. During the period beginning one year period preceding the filing of the initial complaint in this action, Defendants violated Labor Code sections 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2441, 2802, 2810.5, and all applicable Wage Orders, including but not limited to Wage Order 5. These violations subject Employer to civil penalties as set forth in (1) the foregoing statutes, (2) as set forth in the default penalties provisions of Labor Code Section 2699, and (3) IWC Wage Order 5-2001, section 20, as alleged in more detail below.

108. Specifically, Defendants have committed the following violations of California Labor Code, derivately causing direct and/or indirect violations of the aforementioned statutes as follows:

109. A. Failure to Pay Minimum Wages and Overtime Wages: Defendants failed to properly compensate Plaintiff and similarly situated aggrieved employees all owed minimum wages for all hours worked, in addition to all overtime premiums due to them. Plaintiff and those similarly situated to them are non-exempt employees under California law and, thus, subject to the minimum and overtime requirements of California law. Plaintiff, and those similarly situated to

1 them, worked in hours in excess of eight hours per day and/or forty hours per week without being
2 paid for all hours worked (including without being paid premium overtime wages for those
3 overtime hours). Furthermore, Defendants have unlawfully retained such owed compensation
4 despite adequate notice requesting restitution, causing further violations under the Labor Code.
5 Significantly, Defendants failed to pay all wages due on a bi-weekly basis, failing to even pay
6 overtime premiums. As a result, minimum, regular and overtime wages could not have been paid
7 in totality. Accordingly, Defendants have completely failed to pay minimum and overtime wages
8 as required by the California Labor Code. Plaintiff intends to seek individual liability as to Labor
9 Code Section 558 and 558.1 penalties for the person and/or individuals who have caused violations
10 of the wage orders and of all pertinent sections contained therein in these provisions. Individuals
11 should be on notice that Plaintiff will seek immediate amendment of this complaint upon
12 ascertaining their identities, naming them and adding them as individual defendants for purposes of
13 Labor Code Section 558 and 558.1 penalties.

14 110. B. Failure to Pay Wages for Missed Rest and Meal Breaks: Plaintiff and
15 aggrieved employees were denied the full protections of the rest break and meal break provisions
16 of California law. Defendants did not provide and authorize Plaintiff and similarly situated co-
17 workers to take rest breaks for every four hours of work, or major fraction thereof, in accordance to
18 all applicable wage orders. Defendants also denied meal breaks to Plaintiff and similarly situated
19 employees, in accordance to California law.

20 111. C. Pay Stub and Timekeeping Violations: California Labor Code section 226(a)
21 provides (inter alia) that, upon paying an employee his or her wages, the employer must "furnish
22 each of his or her employees ... an itemized statement in writing showing (1) gross wages earned,
23 (2) total hours worked by the employee, except for any employee whose compensation is solely
24 based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
25 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate
26 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
27 deductions, provided, that all deductions made on written orders of the employee may be
28 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the pay period

1 for which the employee is paid, (7) the name of the employee and his or her social security number,
2 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates
3 in effect during the pay period and the corresponding number of hours worked at each hourly rate
4 by the employee." Failure to provide the information of section 226(a) can also be sought as
5 separate penalties pursuant to Labor Code Section 226.3. In addition, because Plaintiff's on-duty
6 hours were not properly recorded by employer and capped thereon, Defendants are also liable for
7 violating Labor Code Sections 1174, 1174.5, and 1199.

8 112. D. Failure to Pay Reimbursable Expenses: Defendants were required to
9 reimburse all necessary and reasonable expenses of Plaintiff in carrying out his duties, or in
10 carrying out lawful orders. Plaintiff alleges that Defendants failed to properly pay reimbursable
11 expenses to its employees.

12 113. E. Failure to Provide Notice at the Time of Hire: Labor Code Section 2810.5
13 requires that an employee be provided with a written notice of the terms and conditions of
14 employment, including but not limited to items such as: hourly wage rate, overtime rate, workers'
15 compensation provider, information pertaining to the employer, and information pertaining to an
16 employee's entitlement to sick pay, amongst other items. Plaintiff and similarly situated employees
17 were not provided with said notices with all of the required items as required by Labor Code
18 Section 2810.5.

19 114. F. Failure to Provide Reasonable Access to Water: Labor Code Section 2441
20 requires that an employee be provided with reasonable access to water during working hours, none
21 of which was provided to Plaintiff and similarly situated employees.

22 115. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
23 employee, on behalf of himself/herself and other current or former employees, to bring a civil
24 action to recover civil penalties against all Defendants pursuant to the procedures specified in
25 Labor Code Sections 2699.3 and 2699.5.

26 116. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
27 section 2699.3 and 2699.5. By letter dated and postmarked May 3, 2016, and amended on or about
28 July 18, 2016, Plaintiff gave written notice by certified mail to the Labor and Workforce

1 Development Agency ("LWDA") and to all Defendants of the specific provisions of the Labor
2 Code alleged to have been violated, including the facts and theories to support the alleged
3 violations.

4 117. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
5 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
6 within 60 days of the date of the complainant's written notice. As of present day, the LWDA has
7 not provided the parties *any* notice within 60 days of either of Plaintiff's notices of its intention to
8 investigate Plaintiff's claims on behalf of himself and aggrieved employees. As of the present day,
9 Defendants have not responded to any of Plaintiff's PAGA notices in an attempt to cure.

10 118. Defendants violated Labor Code sections 204, 210, 216, 221, 223, 225.5, 226,
11 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2441, 2802,
12 2810.5, and all applicable Wage Orders, including Wage Order 5. These violations subject
13 Employer to civil penalties as set forth in (1) the foregoing statutes to the extent that they are
14 specified and contained therein, which Plaintiffs will be seeking on their behalf and on the behalf
15 of similarly situated employees. As to Labor Code sections 210, 216, 221, 223, 558, 558.1, 1174,
16 1174.5, 1194, 1197, 1197.1, 1199, 2441, 2802, 2810.5, 2699, and (3) IWC Wage Order 5-2001,
17 section 20, pursuant to Labor Code sections 2699(a) and (f), Plaintiff, on behalf of himself and
18 similarly situated individuals, are entitled to recover civil penalties for Defendants' violations of
19 these Labor Code sections during the civil penalty period in the following amounts against
20 Defendants as follows:

21 119. a. For violations of Labor Code sections 210; one hundred dollars (\$100) for
22 each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
23 each aggrieved employee per pay period for each subsequent violation [penalty amounts
24 established by Labor Code section 2699(f)(2)].

25 120. b. For violations of Labor Code sections 216; one hundred dollars (\$100) for
26 each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200)
27 for each aggrieved employee per pay period for each subsequent violation [penalty amounts
28 established by Labor Code section 2699(f)(2)].

1 121. c. For violations of Labor Code sections 221; one hundred dollars (\$100) for
2 each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200)
3 for each aggrieved employee per pay period for each subsequent violation [penalty amounts
4 established by Labor Code section 2699(f)(2)].

5 122. d. For violations of Labor Code sections 223; one hundred dollars (\$100) for
6 each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200)
7 for each aggrieved employee per pay period for each subsequent violation [penalty amounts
8 established by Labor Code section 2699(f)(2)].

9 123. f. For violations of Labor Code sections 225.5; one hundred dollars (\$100)
10 for each aggrieved employee per pay period for the initial violation and two hundred dollars
11 (\$200) for each aggrieved employee per pay period for each subsequent violation, in addition to
12 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code
13 section 225.5].

14 124. g. For violations of Labor Code sections 1194, double of the amount of
15 liquidated damages in the amount of unpaid minimum wages, one hundred dollars (\$100) for
16 each underpaid employee for each pay period for the initial violation, and for each subsequent
17 violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay period
18 [penalty amounts established by Labor Code section 1197.1]. In addition, pursuant to Labor Code
19 section 558, Plaintiff, on behalf of himself and those similarly situated aggrieved employees,
20 seeks liquidated damages in the amount equal to those unpaid hours for which they were not paid
21 the minimum wage and the overtime premiums for those hours as well as those for aggrieved
22 employees, in addition to one hour of wages for each denied rest period. Pursuant to Labor Code
23 sections 558 and 1197.1, Plaintiff seeks these penalties as against all Defendant, including
24 individual defendants who will be named and added as defendants after identifications.

25 125. h. For violations of Labor Code Section 558.1, an amount equal to
26 compensate Plaintiff and similarly situated employees for damages as permitted by Labor Code
27 Sections 203, 226, 226.7, 1194, and 2802, in addition to one hundred dollars (\$100) for each
28 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for

1 each aggrieved employee per pay period for each subsequent violation [penalty amounts
2 established by Labor Code section 2699(f)(2)]. All of these damages and applicable penalties are
3 sought against all Defendants, including any other unnamed and unknown individuals who are
4 responsible for these violations. Plaintiff reserves all rights to further amend this complaint upon
5 ascertaining any other individuals responsible for these violations.

6 126. i. For violations of Labor Code section 1174; five hundred dollars (\$500) for
7 each aggrieved employee per pay period for each subsequent violation [penalty amounts
8 established by Labor Code section 1174]. In addition, failure to keep accurate time records violates
9 all applicable wage orders—in itself a violation of Labor Code Section 1199—requiring additional
10 and separate penalties of one hundred dollars (\$100) for each aggrieved employee per pay period
11 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
12 for each subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)];
13 these exact penalty amounts are also sought for violation of Labor code section 1174.5].

14 127. j. For violations of Labor Code sections 1197; one hundred dollars (\$100)
15 for each aggrieved employee per pay period for the initial violation and two hundred dollars
16 (\$200) for each aggrieved employee per pay period for each subsequent violation [penalty
17 amounts established by Labor Code section 2699(f)(2)].

18 87. k. Defendants failed to provide Plaintiff and similarly situated co-workers
19 with reasonable access to pure and fresh during each work period. For violations of Labor Code
20 section 2441; penalties between fifty dollars and two hundred dollars for (\$50-\$200) for each
21 aggrieved employee per day in which they were not provided fresh and pure drinking waters at
22 accessible and convenient times throughout the work shift [penalty amounts established by Labor
23 Code section 2441].

24 128. l. For violations of Labor Code section 2802; one hundred dollars (\$100) for
25 each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
26 each aggrieved employee per pay period for each subsequent violation [penalty amounts
27 established by Labor Code section 2699(f)(2)].

28 129. m. For violations of Labor Code section 2810.5; one hundred dollars (\$100) for

1 each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
2 each aggrieved employee per pay period for each subsequent violation [penalty amounts
3 established by Labor Code section 2699(f)(2)].

4 130. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
5 reasonable attorney's fees and costs in connection with his claims for civil penalties.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE, PLAINTIFF, ON HIS BEHALF AND ON BEHALF OF THOSE**
8 **SIMILARLY-SITUATED, PRAYS AS FOLLOWS:**

9 **ON THE FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, AND EIGHTH,**
10 **CAUSES OF ACTION:**

11 1. That the Court determine that this action may be maintained as a class action (for the
12 entire California Class and/or any and all of the specified sub-classes) pursuant to California Code
13 of Civil Procedure section 382 and any other applicable law;

14 2. That the named Plaintiff be designated as class representative for the California Class
15 (and all sub-classes thereof);

16 3. A declaratory judgment that the practices complained herein are unlawful; and,

17 4. An injunction against Defendants enjoining them, and any and all persons acting in
18 concert with them, from engaging in each of the unlawful practices, policies and patterns set forth
19 herein.

20 **ON THE FIRST, SECOND, AND THIRD CAUSE OF ACTION:**

21 1. That Defendants be found to have violated the minimum wage, regular wage, and
22 overtime wage provisions of the California Labor Code and the IWC Wage Order as to Plaintiff and
23 the Minimum, Regular, and Overtime Wage Class;

24 2. For damages, according to proof, including but not necessarily limited to unpaid
25 wages;

26 3. For any and all legally applicable penalties;

27 4. For liquidated damages pursuant to California Labor Code sections 1194.2 and 558;

28 5. For pre-judgment interest, including but not limited to that recoverable under

California Labor Code section 1194, and post-judgment interest;

6. For attorneys' fees and costs of suit, including but not limited to that recoverable under California Labor Code section 1194;

7. For pre-judgment interest, including but not limited to that recoverable under California Labor Code section 218.6, and post-judgment interest; and,

8. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FOURTH CAUSE OF ACTION:

1. That Defendants be found to have violated the meal period provisions of the California Labor Code and the Wage Order as to Plaintiff and the Meal Period Class;

2. For damages, according to proof, including unpaid premium wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under California Labor Code section 218.6, and post-judgment interest; and

5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FIFTH CAUSE OF ACTION:

1. That Defendants be found to have violated the rest period provisions of the California Labor Code and the Wage Order as to Plaintiff and the Rest Period Class;

2. For damages, according to proof, including unpaid premium wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under California Labor Code section 218.6, and post-judgment interest; and

5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE SIXTH CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the California Labor Code regarding accurate itemized paystubs as to the Wage Statement Class;

1 2. For damages and/or penalties, according to proof, including damages and/or statutory
2 penalties under California Labor Code section 226(e) and any other legally applicable damages or
3 penalties;

4 3. For pre-judgment interest and post-judgment interest;

5 4. For an injunction against Defendants enjoining them, and any and all persons acting
6 in concert with them, from engaging in violations of California Labor Code section 226(a);

7 5. For attorneys' fees and costs of suit, including but not limited to that recoverable
8 under California Labor Code section 226(e); and,

9 6. For such and other further relief, in law and/or equity, as the Court deems just or
10 appropriate.

11 **ON THE SEVENTH CAUSE OF ACTION:**

12 1. That Defendants be found to have violated the provisions of the California Labor
13 Code regarding payment of reimbursable expenses as to the Reimbursement Class;

14 2. For damages and/or penalties, according to proof, including damages and/or statutory
15 penalties under California Labor Code section 2802, and any other legally applicable damages or
16 penalties;

17 3. For pre-judgment interest and post-judgment interest; and,

18 4. For attorneys' fees and costs of suit, including but not limited to that recoverable
19 under California Labor Code section 2802; and

20 5. For such and other further relief, in law and/or equity, as the Court deems just or
21 appropriate.

22 **ON THE EIGHTH CAUSE OF ACTION:**

23 1. That Defendants be found to have violated California Business and Professions Code
24 section 17200, et seq., for the conduct alleged herein as to all Classes;

25 2. A declaratory judgment that the practices complained herein are unlawful;

26 3. An injunction against Defendants enjoining them, and any and all persons acting in
27 concert with them, from engaging in each of the unlawful practices, policies and patterns set forth
28 herein;

- 1 4. For restitution to the full extent permitted by law; and,
2 5. For such and other further relief, in law and/or equity, as the Court deems just or
3 appropriate.

4 **ON THE NINTH CAUSE OF ACTION:**

- 5 1. That Defendants be found to have violated the provisions of the California Labor
6 Code and Wage Order as to Plaintiff and current or former aggrieved employees;
7 2. For any and all legally applicable penalties, including but not limited to that
8 recoverable under California Labor Code section 2699(f), 2699.3, and 2699.5;
9 3. For attorneys' fees and costs of suit, including but not limited to that recoverable
10 under California Labor Code section 2699(g); and,
11 4. For such and other further relief, in law and/or equity, as the Court deems just or
12 appropriate.

13 Dated: September 19, 2016

Respectfully submitted,
CROSNER LEGAL, APC

14
15 By: 

Michael Crosner, Esq.
Zach Crosner, Esq.
Attorneys for PLAINTIFF
JIWANN CHHINA
and Other Class Members

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23 **DEMAND FOR JURY TRIAL**

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25 PLAINTIFF JIWANN CHHINA demands a trial by jury for himself and the California Class
26 on all claims so triable.

27 Dated: September 19, 2016

Respectfully submitted,
CROSNER LEGAL, APC

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By: 
Michael Crosner, Esq.
Zach Crosner, Esq.
Attorneys for PLAINTIFF
JIWANN CHHINA
And Other Class Members

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