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on behalf of herself and all others similarly situated

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

DANA MARIA SEPULVEDA MORALES, an
individual and on behalf of all others similarly
situated,

Plaintiff,

v.

EYE CARE CENTER OF NAPA VALLEY, A
MEDICAL CORPORATION, a California
Corporation; DAVID S. KIM; an individual;
PAUL K. ROW; an individual; and DOES 1
through 100, inclusive,

Defendants.

25CV001559

CASE NO.:

**CLASS ACTION COMPLAINT &
ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, *ET
SEQ.* FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. FAILURE TO PAY TIMELY WAGES;
7. WAGE STATEMENT VIOLATIONS;
8. FAILURE TO INDEMNIFY;
9. PENALTIES PURSUANT TO LABOR
CODE § 2699, *ET SEQ.*; and
10. UNFAIR COMPETITION

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$35,000.00]

COMES NOW, Plaintiff DANA MARIA SEPULVEDA MORALES (“Plaintiff”), on behalf of herself and all others similarly situated, and alleges as follows:

INTRODUCTION

1. This is a Class and Representative Action, pursuant to Code of Civil Procedure section 382, against EYE CARE CENTER OF NAPA VALLEY, A MEDICAL CORPORATION (“Eye Care” or the “Company”), DAVID S. KIM (“Kim”), PAUL K. ROW (“Row”), and any of their respective subsidiaries or affiliated companies within the State of California (the Company, Kim, Row, and DOES 1 through 100, as further defined below, collectively, “Defendants”) on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants (hereinafter, “Class Members” and/or “Aggrieved Employees”).

PARTIES

A. Plaintiff

2. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, welcoming patients to the facility, answering incoming calls promptly, forwarding calls or taking messages, handling inquiries and providing basic information, scheduling and confirming appointments, maintaining calendars for staff, handling patient concerns or complaints, and providing directions or assistance within the facilities within the state of California. Plaintiff is informed and believes and based thereon alleges that Plaintiff worked for Defendants from approximately September 2021, through the present.

B. Defendants

3. Plaintiff is informed and believes and based thereon alleges that defendant Eye Care is, and at all times relevant hereto, a corporation organized and existing under and by virtue of the laws of the State of California and doing business in the County of Napa, State of California.

4. Plaintiff is informed and believes and based thereon alleges that defendant Kim is, and at all times relevant hereto was, an individual residing in California, as well as a Chief Executive Officer/Chief Financial Officer/Owner or Co-Owner for Eye Care, and DOES 1 through 100, as

1 further defined below. Plaintiff is further informed and believes and based thereon alleges that Kim
2 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
3 provisions in violation of Labor Code section 558.1.

4 5. Plaintiff is informed and believes and based thereon alleges that defendant Row is,
5 and at all times relevant hereto was, an individual residing in California, as well as a
6 Secretary/Owner or Co-Owner for Eye Care, and DOES 1 through 100, as further defined below.
7 Plaintiff is further informed and believes and based thereon alleges that Row violated, or caused to
8 be violated, the above-referenced and below-referenced Labor Code provisions in violation of Labor
9 Code section 558.1.

10 6. The true names and capacities, whether individual, corporate, associate, or otherwise,
11 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
12 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
13 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
14 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
15 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
16 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
17 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
18 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
19 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
20 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
21 include Eye Care, Kim, Row, and any of their parent, subsidiary, or affiliated companies within the
22 State of California, as well as DOES 1 through 100 identified herein.

23 **JOINT LIABILITY ALLEGATIONS**

24 7. Plaintiff is informed and believes and based thereon alleges that all the times
25 mentioned herein, each of the Defendants were the agent, principal, employee, employer,
26 representative, joint venture or co-conspirator of each of the other defendants, either actually or
27 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
28 employment, joint venture, and conspiracy.

1 8. All of the acts and conduct described herein of each and every corporate defendant
2 was duly authorized, ordered, and directed by the respective and collective defendant corporate
3 employers, and the officers and management-level employees of said corporate employers. In
4 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
5 their said employees, agents, and representatives, and each of them; and upon completion of the
6 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
7 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
8 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
9 aforementioned corporate employees, agents and representatives.

10 9. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
11 unity of interest and ownership between Defendants, and each of them, that their individuality and
12 separateness have ceased to exist.

13 10. Plaintiff is informed and believes, and based thereon alleges that despite the
14 formation of the purported corporate existence of Eye Care, and DOES 1 through 50, inclusive (the
15 “Alter Ego Defendants”), they, and each of them, are one and the same with Kim, Row, and DOES
16 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to, the following
17 reasons:

18 a. The Alter Ego Defendants are completely dominated and controlled by the
19 Individual Defendants who personally committed wrongful and illegal acts and violated the laws as
20 set forth in this Complaint, and who has hidden and currently hide behind the Alter Ego Defendants
21 to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or inequitable purpose;

22 b. The Individual Defendants derive actual and significant monetary benefits
23 by and through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego Defendants
24 as the funding source for the Individual Defendants’ own personal expenditures;

25 c. Plaintiff is informed and believes and thereon alleges that the Individual
26 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to appear
27 as though separate and distinct for purposes of perpetrating fraud, circumventing a statute, or
28

1 accomplishing some other wrongful or inequitable purpose;

2 d. Plaintiff is informed and believes and thereon alleges that the business
3 affairs of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times
4 mentioned herein were, so mixed and intermingled that the same cannot reasonably be segregated,
5 and the same are inextricable confusion. The Alter Ego Defendants are, and at all relevant times
6 mentioned herein were, used by the Individual Defendants as mere shells and conduits for the
7 conduct of certain of their, and each of their affairs. The Alter Ego Defendants are, and at all relevant
8 times mentioned herein were, the alter egos of the Individual Defendants;

9 e. The recognition of the separate existence of the Individual Defendants and
10 the Alter Ego Defendants would promote injustice insofar that it would permit defendants to insulate
11 themselves from liability to Plaintiff for violations of the California Government Code, Civil Code,
12 Labor Code, and other statutory violations. The corporate existence of these defendants should thus
13 be disregarded in equity and for the ends of justice because such disregard is necessary to avoid
14 fraud and injustice to Plaintiff, and all other similarly situated employees, herein;

15 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the
16 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must be
17 disregarded;

18 g. As a result of the aforementioned facts, among others, Plaintiff is informed
19 and believes, and based thereon alleges that the Individual Defendants, the Alter Ego Defendants,
20 and each of them, are joint employers by virtue of a joint enterprise, and that Plaintiff was an
21 employee of the Alter Ego Defendants and the Individual Defendants. Plaintiff performed services
22 for each and every defendant, and to the mutual benefit of all defendants, and all defendants shared
23 control of Plaintiff and all other similarly situated employees, either directly or indirectly, and in the
24 manner in which defendants' business was and is conducted.

25 11. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
26 thereon alleges that Defendants, and each of them, are joint employers.

27 **JURISDICTION**

28 12. Jurisdiction exists in the Superior Court of the State of California pursuant to Code

1 of Civil Procedure section 410.10.

2 13. Venue is proper in Napa County, California pursuant to Code of Civil Procedure
3 sections 392, et seq. because, among other things, Napa County is where the causes of action
4 complained of herein arose; the county in which the employment contract, or part of it, between
5 Plaintiff, Class Members, and/or Aggrieved Employees, or some of them, and Defendants was due
6 to be performed; the county in which the employment contract, or part of it, between Plaintiff, Class
7 Members, and/or Aggrieved Employees, or some of them, and Defendants was actually performed.
8 Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff, Class Members, and/or
9 Aggrieved Employees in Napa County, and because Defendants employ numerous Class Members
10 and/or Aggrieved Employees in Napa County.

11 **FACTUAL BACKGROUND**

12 14. For at least four (4) years prior to the filing of this action and continuing to the
13 present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or
14 some of them, in violation of California state wage and hour laws as a result of, without limitation,
15 Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and
16 seven consecutive work days in a work week without being properly compensated for hours worked
17 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
18 worked on the seventh consecutive work day in a work week by, among other things, Defendants
19 had, and continue to have, a company-wide policy and practice discouraging and impeding
20 employees from recording hours worked that were outside of their scheduled shifts in order to limit
21 the amount of overtime employees could accrue. On information and belief, this policy of limiting
22 overtime, coupled with Defendants practices of understaffing and assigning heavy workloads, led
23 Plaintiff and Class Members to work off the clock outside of their scheduled shift times in order to
24 complete their assigned tasks and assist patients with questions regarding their medication
25 appointment(s), and at times required them to attend office meetings while off the clock. Further,
26 Defendants required Plaintiff and Class Members to travel to Defendant's offices in St. Helena
27 and/or American Canyon during their meal break(s) while off-the-clock, without proper
28 remuneration. Defendants' failure to accurately track and/or pay for all hours actually worked at

1 the proper overtime rate of pay was to the detriment of Plaintiff and Class Members. As such,
2 Defendants did not account for all the time worked by Plaintiff and Class Members, when
3 calculating the number of hours worked to determine how many hours of overtime wages were and
4 are owed.

5 15. For at least four (4) years prior to the filing of this Action and continuing to the
6 present, Defendants have failed to pay minimum wages to Plaintiff and Class Members, or some of
7 them, in violation of California state wage and hour laws as a result of, among other things, failing
8 to accurately track and/or pay for all hours actually worked at their regular rate of pay for work that
9 was required to be done off-the-clock and/or during designated compliant breaks to the detriment
10 of Plaintiff and Class Members.

11 16. For at least four (4) years prior to the filing of this Action and continuing to the
12 present, Defendants have failed to provide Plaintiff and Class Members, or some of them, full,
13 timely thirty (30) minute uninterrupted meal period for days on which they worked more than five
14 (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on which
15 they worked in excess of ten (10) hours in a work day, and failed to provide compensation for such
16 unprovided meal periods as required by California wage and hour laws due to, without limitation,
17 Defendants had, and continue to have, companywide policies and/or practices of understaffing its
18 facilities, such that there were too few employees on duty to handle the workload and attend to
19 patients, which resulted in a failure to provide Plaintiff and Class Members with adequate meal
20 period coverage, failing to authorize a complaint meal period, pressuring Plaintiff and Class
21 Members to clock-out for meal periods and continue working without receiving a complaint meal
22 period, and by interrupting meal periods to discuss work related activities, or requesting to return
23 from meal periods early.

24 17. For at least four (4) years prior to the filing of this action and continuing to the
25 present, Defendants have failed to authorize and permit Plaintiff and Class Members, or some of
26 them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major fraction
27 thereof and failed to provide compensation for such unprovided rest periods as required by
28 California wage and hour laws due to, without limitation, failing to authorize a compliant rest period,

1 pressuring Plaintiff and Class Members to continue to work through their rest periods by assisting
2 patients with questions regarding their medication appointment(s), and by interrupting rest periods
3 for the reasons discussed above.

4 18. For at least three (3) years prior to the filing of this action and continuing to the
5 present, Defendants have failed to pay Plaintiff and Class Members, or some of them, the full
6 amount of their wages owed to them upon termination and/or resignation as required by Labor Code
7 sections 201, 202, and 203 including for, without limitation, Defendants' failing to pay overtime
8 wages, minimum wages, and premium wages.

9 19. For at least three (3) years prior to the filing of this action and continuing to the
10 present, Defendants have failed to pay Plaintiff and Class Members, the full amount of their wages
11 owed as required by Labor Code section 204. Labor Code section 204 expressly requires employers
12 who pay employees on a weekly, biweekly, or semimonthly basis to pay all wages "not more than
13 seven calendar days following the close of payroll period." Due to Defendants' failure to pay
14 Plaintiff and Class Members all overtime, minimum wage compensation, and meal and rest period
15 premiums as described above, Defendants failed to timely pay its employees within seven calendar
16 days following the close of payroll on a regular and consistent basis. Furthermore, Labor Code
17 section 210 provides that "in addition to, an entirely independent and apart from, any other penalty
18 provided in this article, every person who fails to pay the wages of each employee as provided in
19 sections ... 204 ... shall be subject to a civil penalty as follows: (1) for any initial violation, one
20 hundred dollars (\$100) for each failure to pay each employee; (2) for each subsequent violation, or
21 any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
22 employee, plus 25% of the amount unlawfully withheld."

23 20. For at least three (3) years prior to the filing of this action and continuing to the
24 present, Defendants have failed to indemnify Plaintiff and Class Members, or some of them, for the
25 costs incurred in the use of cellular phones for work-related purposes, failing to provide employees
26 with an adequate number of scrubs for the workweek, thereby requiring them to purchase additional
27 scrubs; and failing to reimburse employees for mileage when they use or used their own vehicles
28 for work-related purposes.

21. For at least one (1) year prior to the filing of this Action and continuing to the present, Defendants have failed to furnish Plaintiff and Class Members, or some of them, with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; the name and address of the legal entity that is the employer, and other such information as required by Labor Code section 226, subdivision (a). As a result thereof, Defendants have failed to furnish employees with an accurate calculation of gross and gross wages earned, as well as gross and net wages paid, and other information described herein.

22. Plaintiffs, on their own behalf and on behalf of Class Members, brings this action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, *et al.*, 2810.5, and applicable Wage Order(s), seeking overtime wages, minimum wages, payment of premium wages for missed meal and rest periods, waiting time penalties, wage statement penalties, failure to indemnify, other such provisions of California law, and reasonable attorneys' fees and costs.

23. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as all monies owed but withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as restitution of amounts owed.

CLASS ACTION ALLEGATIONS

24. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current and former non-exempt employees of Defendants within the State of California at any time and at any location commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to Class Members.

25. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b) to amend or modify the class description with greater specificity, further divide the defined class

1 into subclasses, and to further specify or limit the issues for which certification is sought.

2 26. This action has been brought and may properly be maintained as a class action under
3 the provisions of Code of Civil Procedure section 382 because there is a well-defined community
4 of interest in the litigation and the proposed Class is easily ascertainable.

5 **A. Numerosity**

6 27. The potential Class Members as defined are so numerous that joinder of all the
7 members of the Class is impracticable. While the precise number of Class Members has not been
8 determined yet, Plaintiff is informed and believes that there are over fifty (50) Class Members
9 employed or formerly employed by Defendants within the State of California.

10 28. Accounting for employee turnover during the relevant periods necessarily increases
11 this number. Plaintiff alleges Defendants' employment records would provide information as to the
12 number and location of all Class Members. Joinder of all members of the proposed Class is not
13 practicable.

14 **B. Commonality**

15 29. There are questions of law and fact common to Class Members. These common
16 questions include, but are not limited to:

- 17 A. Did Defendants violate California Labor Code and IWC Wage Order(s) by failing to
18 pay wages to Plaintiff and Class Members for all hours worked?
- 19 B. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
20 worked at a proper overtime rate of pay?
- 21 C. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
22 for all other time worked at the employee's regular rate of pay and a rate of pay that
23 is greater than the applicable minimum wage?
- 24 D. Did Defendants violate Labor Code section 512 by not authorizing or permitting
25 Plaintiff and Class Members to take compliant meal periods?
- 26 E. Did Defendants violate Labor Code section 226.7 by not providing Plaintiff and
27 Class Members with additional wages for missed or interrupted meal periods?
- 28 F. Did Defendants violate applicable Wage Orders by not authorizing or permitting

1 Plaintiff and Class Members to take compliant rest periods?

2 G. Did Defendants violate Labor Code section 226.7 by not providing Plaintiff and
3 Class Members with additional wages for missed or interrupted rest periods?

4 H. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Plaintiff
5 and Class Members upon termination or resignation all wages earned?

6 I. Are Defendants liable to Plaintiff and Class Members for waiting time penalties
7 under Labor Code section 203?

8 J. Did Defendants violate Labor Code section 204 by failing to pay Plaintiff and Class
9 Members timely wages during their employment?

10 K. Are Defendants liable to Plaintiff and Class Members for penalties under Labor Code
11 section 210?

12 L. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
13 Plaintiff and Class Members with accurate wage statements?

14 M. Did Defendants fail to indemnify Class Members for all necessary expenditures or
15 losses incurred in direct consequence of the discharge of their duties or by obedience
16 to the directions of Defendants as required under Labor Code section 2802?

17 N. Did Defendants fail to provide written notice of information material to Plaintiff's
18 and Class Members' employment with Defendants in violation of Labor Code
19 section 2810.5?

20 O. Did Defendants violate the Unfair Competition Law, Business and Professions Code
21 section 17200, *et seq.*, by their unlawful practices as alleged herein?

22 P. Are Class Members entitled to restitution of wages under Business and Professions
23 Code section 17203?

24 Q. Are Class Members entitled to costs and attorneys' fees?

25 R. Are Class Members entitled to interest?

26 **C. Typicality**

27 30. The claims of Plaintiff herein alleged are typical of those claims which could be
28 alleged by any Class Members, and the relief sought is typical of the relief which would be sought

1 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
2 damages arising out of and caused by Defendants' common course of conduct in violation of laws
3 and regulations that have the force and effect of law and statutes as alleged herein.

4 **D. Adequacy of Representation**

5 31. Plaintiff will fairly and adequately represent and protect the interest of Class
6 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
7 hour class actions.

8 **E. Superiority of Class Action**

9 32. A class action is superior to other available means for the fair and efficient
10 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
11 questions of law and fact common to Class Members predominate over any questions affecting only
12 individual Class Members. Class Members, as further described therein, have been damaged and
13 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the
14 violation of the Labor Code as set out herein.

15 33. Class action treatment will allow Class Members to litigate their claims in a manner
16 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of
17 any difficulties that are likely to be encountered in the management of this action that would
18 preclude its maintenance as a class action.

19 **FIRST CAUSE OF ACTION**

20 **(Failure to Pay Overtime Wages – Against All Defendants)**

21 34. Plaintiff re-alleges and incorporates by reference the allegations contained in the
22 preceding paragraphs as though fully set forth herein.

23 35. At all relevant times, Plaintiff and Class Members were employees or former
24 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
25 Wage Order(s).

26 36. At all times relevant to this Complaint, Labor Code section 510 was in effect and
27 provided: "(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in
28 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated

1 at the rate of no less than one and one-half times the regular rate of pay for an employee.”

2 37. At all times relevant to this Complaint, Labor Code section 510 further provided that
3 “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
4 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
5 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of
6 pay.”

7 38. Four (4) years prior to the filing of the Complaint in this Action through the present,
8 Plaintiff and Class Members, worked for Defendants during shifts that consisted of more than eight
9 (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7) consecutive
10 workdays in a workweek, without being paid overtime wages for all hours worked as a result of,
11 including but not limited to, Defendants failing to accurately track and/or pay for all hours actually
12 worked at the proper overtime rate of pay to the detriment of Plaintiff and Class Members, as
13 discussed above.

14 39. Accordingly, by requiring Plaintiff and Class Members to work greater than eight (8)
15 hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays without
16 properly compensating overtime wages at the proper overtime rate of pay, Defendants, willfully
17 violated the provisions of the Labor Code, among others, sections 510, 1194, and applicable IWC
18 Wage Order(s), and California law.

19 40. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
20 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
21 plus interest and penalties thereon, attorneys’ fees and costs, pursuant to Labor Code section 1194
22 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

23 **SECOND CAUSE OF ACTION**

24 **(Failure to Pay Minimum Wages – Against All Defendants)**

25 41. Plaintiff re-alleges and incorporates by reference the allegations contained in the
26 preceding paragraphs as though fully set forth herein.

27 42. At all relevant times, Plaintiff and Class Members were employees or former
28 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage

1 Order(s).

2 43. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and
3 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
4 Defendants' control.

5 44. For four (4) years prior to the filing of the Complaint in this Action through the
6 present, Defendants failed to accurately track and/or pay for all hours actually worked at their
7 regular rate of pay that is above the minimum wage to the detriment of Plaintiff and Class Members
8 as discussed above.

9 45. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
10 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
11 for all hours worked or otherwise due.

12 46. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
13 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to
14 recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
15 damages, reasonable attorneys' fees and costs of suit.

16 **THIRD CAUSE OF ACTION**

17 **(Failure to Provide Meal Periods – Against All Defendants)**

18 47. Plaintiff re-alleges and incorporates by reference the allegations contained in the
19 preceding paragraphs as though fully set forth herein.

20 48. At all relevant times, Plaintiff and Class Members were employees or former
21 employees of Defendants covered by Labor Code section 512 and applicable Wage Order(s).

22 49. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall
23 employ an employee for a work period of more than five (5) hours without a timely meal break of
24 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.
25 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
26 per day without providing the employee with a second timely meal period of not less than thirty (30)
27 minutes in which the employee is relieved of all of his or her duties.

28 50. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee

1 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
2 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
3 of compensation for each workday that the meal period is not provided.

4 51. For four (4) years prior to the filing of the Complaint in this Action through the
5 present, Plaintiff and Class Members were not provided complete, timely 30-minute, duty-free
6 uninterrupted meal periods every five hours of work without waiving the right to take them, as
7 permitted. Moreover, Defendants failed to provide one (1) additional hour of pay at the Class
8 Member's regular rate of compensation when Class Members were not provided compliant meal
9 periods.

10 52. By their failure to provide Plaintiff and Class Members compliant meal periods as
11 contemplated by Labor Code section 512, among other California authorities, and failing, to provide
12 compensation for such unprovided meal periods, as alleged above, Defendants willfully violated the
13 provisions of Labor Code section 512 and applicable Wage Orders.

14 53. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
15 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
16 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

17 54. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
18 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
19 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
20 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

21 **FOURTH CAUSE OF ACTION**

22 **(Failure to Provide Rest Periods – Against All Defendants)**

23 55. Plaintiff re-alleges and incorporates by reference the allegations contained in the
24 preceding paragraphs as though fully set forth herein.

25 56. At all relevant times, Plaintiff and Class Members were employees or former
26 employees of Defendants covered by applicable Wage Orders.

27 57. California law and applicable Wage Order(s) require that employers "authorize and
28 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour

1 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-
2 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
3 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
4 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
5 thirty (30) minutes of paid rest period.

6 58. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
7 with a meal period or rest period as provided in the applicable Wage Order(s) of the Industrial
8 Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the
9 employee’s regular rate of compensation for each workday that the rest period is not provided.

10 59. For four (4) years prior to the filing of the Complaint in this Action through the
11 present, Plaintiff and Class Members were not authorized or permitted to take complete, timely,
12 duty-free uninterrupted rest periods every four (4) hours of work or major fraction thereof.
13 Moreover, Defendants failed to provide one (1) additional hour of pay at the Class Member’s regular
14 rate of compensation on the occasions that Class Members were not authorized or permitted to take
15 compliant rest periods.

16 60. By their failure, to authorize and permit Plaintiff and Class Members to take rest
17 periods contemplated by California law, and one (1) additional hour of pay at the employee’s regular
18 rate of compensation for such unprovided rest periods, as alleged above, Defendants willfully
19 violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

20 61. As a result of Defendants’ unlawful conduct, Plaintiff and Class Members have
21 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
22 owed for rest periods that they were not authorized or permitted to take.

23 62. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
24 additional pay for unprovided compliant rest periods, in amounts to be determined at trial, plus
25 interest and penalties thereon, attorneys’ fees, and costs, under Labor Code sections 226 and 226.7,
26 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

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1 **FIFTH CAUSE OF ACTION**

2 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

3 63. Plaintiff re-alleges and incorporates by reference the allegations contained in the
4 preceding paragraphs as though fully set forth herein.

5 64. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
7 Wage Orders.

8 65. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
9 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
10 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
11 discharge immediately upon termination. Class Members who resigned were entitled to payment
12 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
13 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
14 unpaid at the time of resignation.

15 66. Plaintiff is informed and believes, and based thereon alleges, that in the three (3)
16 years before the filing of the Complaint in this Action through the present, Defendants, due to the
17 failure to provide overtime wages, minimum wages, failed to pay Plaintiff and Class Members all
18 wages earned including without limitation, premium wages prior to resignation or termination in
19 accordance with Labor Code sections 201 or 202.

20 67. Plaintiff is informed and believes Defendants' failure to pay Plaintiff and Class
21 Members all wages earned prior to termination or resignation in accordance with Labor Code
22 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff
23 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
24 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
25 sections 201 and 202 resulting in the failure, on occasion, to pay all wages earned prior to
26 termination or resignation.

27 68. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
28 waiting time penalties from the date their earned and unpaid wages were due, upon termination or

1 resignation, until paid, up to a maximum of thirty (30) days.

2 69. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
3 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned
4 prior to termination or resignation.

5 70. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
6 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
7 waiting time penalties, interest, and their costs of suit, as well.

8 **SIXTH CAUSE OF ACTION**

9 **(Failure to Pay All Wages Within a Timely Manner – Against All Defendants)**

10 71. Plaintiff re-alleges and incorporates by reference the allegations contained in the
11 preceding paragraphs as though fully set forth herein.

12 72. At all relevant times, Labor Code section 200 provides that “wages include all
13 amounts for labor performed by employees of every description, whether the amount is fixed or
14 ascertained by the standard of time, task, pieces, commission basis, or other method of calculation.”

15 73. At all relevant times, Labor Code section 204 states that all wages earned by any
16 person in any employment are payable twice during the calendar month, and must be paid not more
17 than seven days following the close of the period when the wages were earned.

18 74. At all relevant times, Plaintiff and Class Members were employees or former
19 employees of Defendants covered by Labor Code sections 204 and 210, as well as applicable Wage
20 Orders.

21 75. At all relevant times, Labor Code section 204 expressly required employers who pay
22 employees on a weekly, biweekly, or semi-monthly basis to pay all wages “not more than seven
23 calendar days following the close of the payroll period.” Due to Defendants' failure to pay Plaintiff
24 and Class Members all minimum, or overtime wage compensation, and meal and rest period
25 premiums as described above, Defendants failed to timely pay its employees within seven calendar
26 days following the close of payroll in accordance with Labor Code section 204 on a regular and
27 consistent basis.

28 76. As discussed in detail above, by failing to pay for all minimum and/or overtime

1 wages owed, and failing to pay meal and/or rest premiums, among others discussed above,
2 Defendants failed to pay Plaintiff and Class Members at least twice per month in violation of Labor
3 Code section 204.

4 77. As a result, Plaintiff and Class Members are entitled to penalties pursuant to Labor
5 Code section 210.

6 **SEVENTH CAUSE OF ACTION**

7 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

8 78. Plaintiff re-alleges and incorporates by reference the allegations contained in the
9 preceding paragraphs as though fully set forth herein.

10 79. At all relevant times, Plaintiff and Class Members were employees or former
11 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

12 80. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
13 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
14 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
15 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
16 number of hours worked at each hourly rate; and the name and address of the legal entity that is the
17 employer, among other things.

18 81. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
19 before the filing of the Complaint in this Action through the present, Defendants failed to comply
20 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
21 failure, on occasion, to furnish Plaintiff and Class Members with accurate itemized statements that
22 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
23 all applicable hourly rates in effect during the pay period and the corresponding number of hours
24 worked at each hourly rate; and the name and address of the legal entity that is the employer, among
25 other things.

26 82. Defendants' failure to, on occasion, provide Plaintiff and Class Members with
27 accurate wage statements was knowing, intentional, and willful. Defendants had the ability to
28 provide Plaintiff and the other Class Members with accurate wage statements, but, willfully

1 provided wage statements that Defendants knew were not accurate.

2 83. As a result of Defendants' occasional unlawful conduct, Plaintiff and Class Members
3 have suffered injury. The absence of accurate information on Class Members' wage statements has
4 delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
5 mathematical computations to determine the amount of wages owed; causes difficulty and expense
6 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
7 about wages and amounts deducted from wages to state and federal governmental agencies, among
8 other things.

9 84. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members
10 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
11 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent
12 pay period, not to exceed an aggregate \$4,000.00 per employee.

13 85. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
14 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
15 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
16 attorneys' fees, and costs of suit.

17 **EIGHTH CAUSE OF ACTION**

18 **(Violation of Labor Code § 2802 – Against All Defendants)**

19 86. Plaintiff re-alleges and incorporates by reference the allegations contained in the
20 preceding paragraphs as though fully set forth herein.

21 87. At all relevant times, Plaintiff and Class Members were employees or former
22 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

23 88. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify
24 his or her employee for all necessary expenditures or losses incurred by the employee in direct
25 consequence of the discharge of his or her duties . . .”

26 89. For three (3) years prior to the filing of the Complaint in this Action through the
27 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
28 necessary expenditures or losses in direct consequence of the discharge of their duties or at the

1 obedience to the directions of Defendants that included, without limitation: using cellular phones
2 for work-related purposes.

3 90. During that time period, Plaintiff is informed and believes, and based thereon alleges,
4 that Defendants, at times, failed and refused, and still fail and refuse, on occasion, to reimburse
5 Plaintiff and Class Members for those losses and/or expenditures.

6 91. As a result of Defendants' occasional unlawful conduct, Plaintiff and Class Members
7 have suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
8 herein-described losses and/or expenditures.

9 92. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
10 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
11 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
12 costs of suit.

13 **NINTH CAUSE OF ACTION**

14 **(Penalties Pursuant To Labor Code Section 2699, *ET SEQ.* – Against All Defendants)**

15 93. Plaintiff re-alleges and incorporates by reference the allegations contained in the
16 preceding paragraphs as though fully set forth herein.

17 94. At all relevant times herein set forth, PAGA provides that any provision of law under
18 the Labor Code and applicable IWC Wage Order(s) that provides for a civil penalty to be assessed
19 and collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
20 Order(s) may, as an alternative, be received by Class Members or Aggrieved Employees in a civil
21 action brought on behalf of themselves and other current or former employees pursuant to
22 procedures outlined in California Labor Code section 2699.3.

23 95. Plaintiff and Class Members are Aggrieved Employees as defined under Labor Code
24 section 2699(c)(1) in that they suffered the violations alleged in this Complaint and were employed
25 by the alleged violators, Defendants.

26 96. Plaintiff seeks penalties under Labor Code sections 2698 and 2699 for Defendants'
27 violation of all Labor Code provisions included under Labor Code section 2699.5 and includes the
28 penalty provisions, without limitation, based on the following Labor Code sections: 200, 201, 202,

203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, *et al.*, 2810.5, and the applicable Wage Order(s).

97. The penalties shall be allocated as follows: 65% to the Labor and Workforce Development Agency (LWDA) and 35% to the affected employees.

98. Plaintiff and Class Members or Aggrieved Employees also seek any and all penalties and remedies set forth in Labor Code section 558, which states:

- a. Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) [f]or any initial violation, fifty dollars (\$50) for each underpaid employee to an amount sufficient to recover underpaid wages. (2) [f]or each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) [w]ages recovered pursuant to this section shall be paid to the affected employee[s].
- b. If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, any provision regulating hours and days of work in any order of the Industrial Welfare Commission, or any applicable local overtime law, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1
- c. The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

99. Labor Code section 226.3 provides that, “[a]ny employer who violates subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the extent that Labor Code section 226.3 applies, Plaintiff and Class Members or Aggrieved Employees also seek such penalties on.

100. Plaintiff has exhausted his administrative remedy by sending a certified letter to the LWDA and Defendants postmarked on May 22, 2025. The LWDA has not provided notice of its

1 intent to investigate the alleged violations within sixty-five (65) calendar days of the postmark date
2 of the letters.

3 **ELEVENTH CAUSE OF ACTION**

4 **(Unfair Competition – Against All Defendants)**

5 101. Plaintiff re-alleges and incorporates by reference the allegations contained in the
6 preceding paragraphs as though fully set forth herein.

7 102. Plaintiff is informed and believes and based thereon alleges that the unlawful conduct
8 of Defendants alleged herein constitutes unfair competition within the meaning of Business and
9 Professions Code section 17200. Due to their participation at times in unlawful business practices
10 in violation of the Labor Code, Defendants have gained a competitive advantage over other
11 comparable companies doing business in the State of California that comply with their obligations
12 to compensate employees in accordance with the Labor Code.

13 103. As a result of Defendants' occasional unfair competition as alleged herein, Plaintiff
14 and Class Members have suffered injury in fact and lost money or property.

15 104. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
16 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
17 Code and requiring the establishment of appropriate and effective means to prevent further
18 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
19 including interest thereon, in which they had a property interest and which Defendants nevertheless
20 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
21 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched
22 by their failure to comply with the Labor Code.

23 105. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
24 Procedure section 1032 and interest under Civil Code section 3287.

25 **DEMAND FOR JURY TRIAL**

26 106. Plaintiff demands a trial by jury on all causes of action contained herein

27 **PRAYER**

28 WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment

1 against Defendants as follows:

- 2 A. An order certifying this case as a Class Action;
- 3 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
- 4 counsel as class counsel;
- 5 C. Damages for all wages earned and owed, including minimum, and/or overtime
- 6 wages under Labor Code sections 218.6, 510, 1194, 1197, and 1199;
- 7 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 8 E. Damages for unpaid premium wages from missed meal and rest periods under,
- 9 among other Labor Code sections, 512 and 226.7;
- 10 F. Penalties for inaccurate wage statements under Labor Code section 226,
- 11 subdivision (e);
- 12 G. Waiting time penalties under Labor Code section 203;
- 13 H. Damages for failing to timely pay wages under Labor Code section 204 and
- 14 penalties pursuant to section 210;
- 15 I. Damages under Labor Code section 2802;
- 16 L. For penalties pursuant to Labor Code section 2698, 2699, *et seq.*, as may be
- 17 proven;
- 18 M. Preliminary and permanent injunctions prohibiting Defendants from further
- 19 violating the California Labor Code and requiring the establishment of appropriate
- 20 and effective means to prevent future violations;
- 21 N. Restitution of wages and benefits due which were acquired by means of any unfair
- 22 business practice, according to proof;
- 23 O. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 24 P. For attorneys' fees in prosecuting this action;
- 25 Q. For costs of suit incurred herein; and

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

Dated: July 29, 2025

MIRACLE MILE LAW GROUP, LLP

BY: 

STEVEN I. AZIZI
SEVADA HAKOPIAN

Attorneys for Plaintiff DANA MARIA SEPULVEDA
MORALES, on behalf of herself and all others similarly
situated