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14 MICHELLE R. VARNER, and all others similarly situated

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF RIVERSIDE**

17 **(UNLIMITED JURISDICTION)**

18 MICHELLE R. VARNER, on behalf of herself
19 and all others similarly situated, and the general
20 public,

21 *Plaintiff(s),*

22 vs.

23 MEDCARE FARMS, a California corporation;
24 MEDCARE FARMS COSTA MESA, LLC, a
California limited liability company;
25 MEDCARE FARMS 2.0, LLC, a California
limited liability company; NGU HOLDINGS,
26 INC., a California corporation; MEDCARE AN
AGRICULTURAL COOPERATIVE, a
27 California corporation; MEDCARE CORONA,
a California corporation; MEDCARE
28 ENTERPRISES, a California corporation;

Case No. **CVRI 2301395**

CLASS ACTION

COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code



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1 MEDCARE MANUFACTURING, LLC, a
2 California limited liability company;
3 MEDCARE LLC, a California limited liability
4 company; and DOES 1–50, inclusive,

Defendants.

§203); and
7. Unfair Competition (Bus. & Prof. Code
§§ 17200, et seq.)

JURY TRIAL DEMANDED



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Plaintiff, Michelle R. Varner (hereafter “Plaintiff” or “Varner”), on behalf of herself and all others similarly situated, complains and alleges as follows:

I. INTRODUCTION

1. Plaintiff brings this class action for alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”), and the California Business and Professions Code against Defendants Medcare Farms, a California corporation, Medcare Farms Costa Mesa, LLC, a California limited liability company, Medcare Farms 2.0, LLC, a California limited liability company, NGU Holdings, Inc., a California corporation, Medcare an Agricultural Cooperative, a California corporation, Medcare Corona, a California corporation, Medcare Enterprises, a California corporation, Medcare Manufacturing, LLC, a California limited liability company, Medcare LLC, a California limited liability company, and Does 1 through 50, inclusive (collectively “Defendants”).

2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her and other similarly situated workers for unpaid wages, statutory penalties, interest, and related relief. These claims are based on Defendants’ failures to:

(A) Pay all wages, including minimum, regular, overtime and doubletime wages, earned for all hours worked at the correct rates of pay;

(B) Provide all meal periods;

(C) Authorize and permit all rest breaks;

(D) Pay premium wages for unprovided meal periods;

(E) Pay premium wages for unprovided rest breaks;

(F) Indemnify for necessary work-related expenditures;

(G) Issue only accurate and complete itemized wage statements; and

(H) Timely pay wages upon termination of employment;

Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages, restitution, statutory penalties, attorneys’ fees, costs, and related relief through this class action.

II. THE PARTIES

3. Plaintiff Michelle R. Varner is a resident of California.

4. Defendant Medcare Farms is a corporation organized and existing under the laws of California and a citizen of California based on Plaintiff’s information and belief.

5. Defendant Medcare Farms Costa Mesa LLC is a limited liability company



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1 organized and existing under the laws of California and a citizen of California based on
2 Plaintiff's information and belief.

3 6. Defendant Medcare Farms 2.0, LLC is a limited liability company organized and
4 existing under the laws of California and a citizen of California based on Plaintiff's information
5 and belief.

6 7. Defendant NGU Holdings, Inc. is a corporation organized and existing under the
7 laws of California and a citizen of California based on Plaintiff's information and belief.

8 8. Defendant Medcare an Agricultural Cooperative is a corporation organized and
9 existing under the laws of California and a citizen of California based on Plaintiff's information
10 and belief.

11 9. Defendant Medcare Corona is a corporation organized and existing under the
12 laws of California and a citizen of California based on Plaintiff's information and belief.

13 10. Defendant Medcare Enterprises is a corporation organized and existing under the
14 laws of California and a citizen of California based on Plaintiff's information and belief.

15 11. Defendant Medcare LLC is a limited liability company organized and existing
16 under the laws of California and a citizen of California based on Plaintiff's information and
17 belief.

18 12. Defendant Medcare Manufacturing, LLC is a limited liability company organized
19 and existing under the laws of California and a citizen of California based on Plaintiff's
20 information and belief.

21 13. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
22 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
23 is informed and believes and thereon alleges that said Defendants are legally responsible for the
24 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
25 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE
26 Defendants when ascertained.

27 14. Plaintiff is informed and believes and thereon alleges that, at all relevant times
28 herein, all Defendants were the agents, employees and/or servants, masters, or employers of the
remaining defendants, and in doing the things hereinafter alleged, were acting, or failing to act
within the course and scope of such agency, employment, direction and control, and with the
approval and ratification of each of the other Defendants.



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1 15. At all relevant times, in perpetrating the acts and omissions alleged herein,
2 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
3 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
4 Members or otherwise complying with their rights in accordance with applicable California labor
5 laws as alleged herein.

6 16. At all relevant times, in perpetrating the acts and omissions alleged herein,
7 Defendants, and each of them, acted pursuant to and in furtherance of a policy and/or practice,
8 or lack thereof, which resulted in Defendants not paying Plaintiff and other members of the
9 below-described class in accordance with applicable laws as alleged herein.

10 **III. CLASS ALLEGATIONS**

11 17. This action has been brought and may be maintained as a class action pursuant to
12 California Code of Civil Procedure section 382 because there is a well-defined community of
13 interest among the persons who comprise the readily ascertainable class defined below and
14 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
15 a class action.

16 18. **Class Definition:** The Class is defined as follows: All persons Defendants
17 employed in California as hourly employees, including cannabis growers, budtenders, and
18 dispatchers, individuals performing work comparable to the aforementioned, compensated
19 comparably to the aforementioned, and individuals in similar positions, at any time during the
20 period beginning four years prior to the filing of this action and ending on the date that final
21 judgment is entered in this action (“Class” or “Class Members”).

22 19. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
23 right to amend or modify the class definition with greater specificity, by further division into
24 subclasses and/or by limitation to particular issues.

25 20. **Numerosity:** The Class Members are so numerous that the individual joinder of
26 each individual Class Member is impractical. While Plaintiff does not currently know the exact
27 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
28 minimum required for numerosity under California laws.

 21. **Commonality and Predominance:** Common questions of law and fact exist as
to all Class Members and predominate over any questions which affect only individual Class
Members. These questions include, but are not limited to:



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1 A. Whether Defendants failed to pay all wages earned to Class Members for
2 all hours worked at the correct rates of pay, including, all overtime, doubletime, rest break
3 premium, and meal period premium wages;

4 B. Whether Defendants failed to provide the Class Members with all meal
5 periods in compliance with California law;

6 C. Whether Defendants failed to authorize and permit the Class Members to
7 take all rest periods in compliance with California law;

8 D. Whether Defendants failed to indemnify the Class Members for the
9 reasonable expenses they incurred during the course of performing their duties;

10 E. Whether Defendants knowingly and intentionally failed to provide the
11 class with accurate and complete itemized wage statements;

12 F. Whether Defendants willfully failed to provide the class with timely final
13 wages;

14 G. Whether Defendants engaged in unfair competition within the meaning of
15 Business and Professions Code sections 17200, *et seq.*, with respect to the Class; and

16 H. Whether Class Members are entitled to restitution of money or property
17 that Defendants may have acquired from them through alleged Labor Code violations.

18 22. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
19 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
20 practice, or lack thereof, which resulted in Defendants failing to comply with the California
21 Labor Code, the Wage Order, and the Business and Professions Code.

22 23. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
23 in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
24 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
25 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
26 Members.

27 24. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in
28 that they have no known conflicts of interest with Plaintiff or absent Class Members, are
experienced in class action litigation, and are dedicated to vigorously prosecuting this action on
behalf of Plaintiff and absent Class Members.

25 25. **Superiority:** A class action is vastly superior to other available means for fair



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1 and efficient adjudication of Class Members' claims and would be beneficial to the parties and
2 the Court. Class action treatment will allow a number of similarly situated persons to
3 simultaneously and efficiently prosecute their common claims in a single forum without the
4 unnecessary duplication of effort and expense that numerous individual actions would entail. In
5 addition, the monetary amounts due to many individual Class Members are likely to be relatively
6 small and would thus make it difficult, if not impossible, for individual Class Members to both
7 seek and obtain relief. Moreover, a class action will serve an important public interest by
8 permitting Class Members to effectively pursue the recovery of monies owed to them. Further,
9 a class action will prevent the potential for inconsistent or contradictory judgments inherent in
individual litigation.

10 **IV. STATEMENT OF FACTS**

11 26. The Wage Order applies to "all persons employed in the mercantile industry
12 whether paid on a time, piece rate, commission, or other basis..." Wage Order, § 1. The Wage
13 Order defines "Mercantile Industry" to mean "any industry, business, or establishment operated
14 for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or
15 retail; or for the purpose of renting goods or commodities." Wage Order, § 2(H). At all relevant
16 times during the applicable limitations period, the Defendants, Varner, and all other Class
17 Members were covered by the Wage Order because the Defendants operated, and Varner and all
18 of the Class Members worked for, one or more establishments operated as retail cannabis farms
19 and dispensaries. Accordingly, Varner and all other Class Members are entitled to the protections
the Wage Order provides.

20 27. On approximately April 28, 2022, the Defendants began to employ Varner in
21 Lake Elsinore in the position of hourly, non-exempt farmer, budtender, and dispatcher. The
22 Defendants continuously employed her in that capacity until on or about August 18, 2022 when
23 her employment ended.

24 28. At all relevant times, the Defendants issued wages to Varner and all other Class
25 Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant
26 times, the Defendants classified Varner and all other Class Members as non-exempt employees
27 entitled to the protections of the Labor Code and the Wage Order.

28 29. At all relevant times, the Defendants failed to provide Varner and all other Class
Members with all timely 30-minute, off-duty meal periods. The Defendants prohibited Varner



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1 and the Class Members from ignoring their phones for work-related communications at any time
2 during the workday. The Defendants required Varner and all other Class Members to promptly
3 respond to any incoming messages from clients, drivers, and/or management. Defendants would
4 discipline them if they did not comply. Consequently, the Defendants forced Varner and the
5 Class Members to forgo their 30-minute meal period without compensation. The Defendants
6 also failed to pay premium wages for days on which they failed to provide Varner and all other
7 Class Members with meal periods as required by law.

8 30. At all relevant times, the Defendants failed to authorize and permit Varner and
9 all other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
10 or major portion thereof. The Defendants prohibited Varner and the Class Members from
11 ignoring their phones for work-related communications at any time during the workday. The
12 Defendants required Varner and all other Class Members to promptly respond to any incoming
13 messages from clients, drivers, and/or management. Defendants would discipline them if they
14 did not comply. Consequently, the Defendants forced Varner and the Class Members to forgo
15 their 10-minute, duty-free rest breaks. The Defendants also failed to pay premium wages for
16 days on which they failed to authorize and permit Varner and all other Class Members to take
17 rest breaks as required by law.

18 31. At all relevant times, the Defendants required Varner and all other Class Members
19 to incur certain business expenses in the course of performing their duties. The Defendants
20 required Varner and all other Class Members to supply mobile phones to perform their job duties.
21 However, the Defendants did not provide these items and did not reimburse Varner and the other
22 Class Members for these items. The Defendants required Varner and all other Class Members to
23 use their personal cell phones to conduct company business and record their worktime and other
24 work-related events. The Defendants required Varner and all other Class Members to monitor
25 their personal mobile phones during all working hours, including rest and meal breaks, for work-
26 related communications. The Defendants required Varner and all other Class Members to
27 conduct all company business on their personal cell phones, but did not reimburse them for the
28 use of their personal cell phones or any telecom expenses incurred.

32. At all relevant times, the Defendants failed to issue to Varner and all other Class
Members complete and accurate wage statements that state all hours worked at the correct rates
of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on the



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1 wage statements they issued to Varner and all other Class Members the unpaid wages discussed
2 above. The wage statements fail to state all earned wages, including overtime and doubletime
3 wages, all rest break premium wages earned, all meal period premium wages earned, and related
4 information.

5 33. At all relevant times, the Defendants also failed to timely pay Varner and all other
6 Class Members all earned wages as described above during and at the conclusion of employment.

7 34. At all relevant times, the Defendants failed to maintain accurate employee records
8 of Varner and all other Class Members.

9 35. For the reasons stated herein, Plaintiff alleges that, as a result of Defendants'
10 unlawful practices and policies, Plaintiff and the Class Members were:

- 11 A. Not paid all wages earned for all hours worked at the correct rates of pay;
- 12 B. Not provided with all off duty meal periods;
- 13 C. Not authorized and permitted to take all rest break periods;
- 14 D. Not paid one hour's pay for each workday in which Defendants failed to
15 authorize and permit them to take one or more timely rest periods;
- 16 E. Not paid one hour's pay for each workday in which Defendants failed to
17 provide them with one or more timely meal periods;
- 18 F. Not paid all wages earned, including, but not limited to, minimum,
19 regular, overtime, and doubletime wages for work performed while clocked out;
- 20 G. Not indemnified for all necessary business expenditures incurred during
21 the discharge of their duties;
- 22 H. Not provided with accurate and complete wage statements; and
- 23 I. Not timely paid all earned and unpaid wages at the time their employment
24 ended.

25 **FIRST CAUSE OF ACTION**

26 **FAILURE TO PAY ALL WAGES AT THE CORRECT RATES**

27 **Lab. Code §§ 510, 1194, 1197, and 1198**

28 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

36. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

37. At all relevant times, Plaintiff and the Class Members have been non-exempt
employees entitled to the protections of both the Labor Code and the Wage Order.



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1 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
2 **THE CORRECT RATES OF PAY**

3 38. Section 2 of the Wage Order defines “hours worked” as “the time during which
4 an employee is subject to the control of an employer, and includes all the time the employee is
5 suffered or permitted to work, whether or not required to do so.”

6 39. Section 3 of the Wage Order states:

7 (A) Daily Overtime - General Provisions

8 (1) The following overtime provisions are applicable to
9 employees 18 years of age or over and to employees 16 or
10 17 years of age who are not required by law to attend school
11 and are not otherwise prohibited by law from engaging in the
12 subject work. Such employees shall not be employed more
13 than eight (8) hours in any workday or more than 40 hours
14 in any workweek unless the employee receives one and one-
15 half (1 ½) times such employee’s regular rate of pay for all
16 hours worked over 40 hours in the workweek. Eight (8)
17 hours of labor constitutes a day’s work. Employment beyond
18 eight (8) hours in any workday or more than six (6) days in
19 any workweek is permissible provided the employee is
20 compensated for such overtime at not less than:

21 (a) One and one-half (1 ½) times the employee’s regular
22 rate of pay for all hours worked in excess of eight (8)
23 hours up to and including 12 hours in any workday,
24 and for the first eight (8) hours worked on the seventh
25 (7th) consecutive day of work in a workweek.

26 (b) Double the employee’s regular rate of pay for all
27 hours worked in excess of 12 hours in any workday
28 and for all hours worked in excess of eight (8) hours
on the seventh (7th) consecutive day of work in a
workweek.

(c) The overtime rate of compensation required to be
paid to a nonexempt full-time salaried employee
shall be computed by using the employee’s regular
hourly salary as one-fortieth (1/40) of the employee’s
weekly salary.

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1 40. Section 4 of the Wage Order requires an employer to pay non-exempt employees
2 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
3 an employer has actual or constructive knowledge that employees are working.

4 41. Labor Code section 510 states:

5 Eight hours of labor constitutes a day's work. Any work in excess of eight
6 hours in one workday and any work in excess of 40 hours in any one
7 workweek and the first eight hours worked on the seventh day of work in
8 any one workweek shall be compensated at the rate of no less than one and
9 one-half times the regular rate of pay for an employee. Any work in excess
10 of 12 hours in one day shall be compensated at the rate of no less than twice
11 the regular rate of pay for an employee. In addition, any work in excess of
12 eight hours on any seventh day of a workweek shall be compensated at the
rate of no less than twice the regular rate of pay of an employee. Nothing in
this section requires an employer to combine more than one rate of overtime
compensation in order to calculate the amount to be paid to an employee for
any hour of overtime work.

13 42. Labor Code section 1194 invalidates any agreement between an employer and an
14 employee to work for less than the minimum wage required under the applicable Wage Order.

15 43. Labor Code section 1197 makes it unlawful for an employer to pay an employee
16 less than the minimum wage required under the applicable Wage Order for all hours worked
17 during a payroll period.

18 44. Labor Code section 1198 makes it unlawful for an employer to employ an
19 employee under conditions that violate the Wage Order.

20 45. In conjunction, these provisions of the Labor Code require employers to pay non-
21 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
22 worked, including unrecorded hours when the employer knew or reasonably should have known
23 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
Cal.4th 575, 585.)

24 46. At all relevant times during the applicable limitations period, Defendants failed
25 to compensate Plaintiff and the Class Members for all hours worked, including, but not limited
26 to minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and
27 doubletime hours, respectively, that they worked at the correct rates of pay.

28 47. At all relevant times during the applicable limitations period, the Defendants
prohibited Varner and the Class Members from ignoring their phones for work-related



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1 communications at any time during their workday. The Defendants required Varner and all other
2 Class Members to promptly respond to any incoming messages from clients, drivers, and/or
3 management. Defendants would discipline them if they did not comply. Consequently, the
4 Defendants forced Varner and the other Class Members to work hours without compensation.

5 48. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
6 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
7 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
8 rates of pay as required by California law.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PROVIDE MEAL PERIODS**

11 **Lab. Code §§ 226.7 and 512**

12 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

13 49. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

14 50. At all relevant times during the applicable limitations period, Plaintiff and the
15 Class Members have been employees of Defendants and entitled to the benefits and protections
16 of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

17 51. In relevant part, California Labor Code § 1198 states:

18 The maximum hours of work and the standard conditions of labor fixed by
19 the commission shall be the maximum hours of work and the standard
20 conditions of labor for employees. The employment of any employee for
21 longer hours than those fixed by the order or under conditions of labor
22 prohibited by the order is unlawful.

23 52. In relevant part, In relevant part, California Labor Code § 512 states:

24 An employer shall not employ an employee for a work period of more than
25 five hours per day without providing the employee with a meal period of
26 not less than 30 minutes, except that if the total work period per day of the
27 employee is no more than six hours, the meal period may be waived by
28 mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than
10 hours per day without providing the employee with a second meal period
of not less than 30 minutes, except that if the total hours worked is no more
than 12 hours, the second meal period may be waived by mutual consent of
the employer and the employee only if the first meal period was not waived.



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53. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

54. In relevant part, California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to,



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an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

55. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

56. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants prohibited Varner and the Class Members from ignoring their phones for work-related communications at any time during the workday. The Defendants required Varner and all other Class Members to promptly respond to any incoming messages from clients, drivers, and/or management. Defendants would discipline them if they did not comply. Consequently, the Defendants forced Varner and the other Class Members to forgo their 30-minute meal periods without compensation.

57. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely meal periods. Defendants denied Plaintiff and the other Class Members their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods.

58. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing Plaintiff and the Class Members with all off-duty meal periods required by California law.

59. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all meal periods not provided to them.

60. By reason of the above, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more meal periods were not provided to them pursuant to



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California Labor Code § 226.7.

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

61. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

62. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7 and 1198, and the Wage Order.

63. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

64. In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

65. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal



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1 or rest period mandated pursuant to an applicable statute, or
2 applicable regulation, standard, or order of the Industrial Welfare
3 Commission, the Occupational Safety and Health Standards Board,
4 or the Division of Occupational Safety and Health.

5 (c) If an employer fails to provide an employee a meal period or rest
6 period in accordance with a state law, including, but not limited to,
7 an applicable statute or applicable regulation, standard, or order of
8 the Industrial Welfare Commission, the Occupational Safety and
9 Health Standards Board, or the Division of Occupational Safety and
10 Health, the employer shall pay the employee one additional hour of
11 pay at the employee's regular rate of compensation for each work
12 day that the meal or rest period is not provided.

13 66. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
14 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period
15 of work, or major fraction thereof.

16 67. Defendants intentionally failed to authorize and permit Plaintiff and the Class
17 Members to take all 10-minute rest periods free from any work duties in accordance with the
18 Wage Order. The Defendants prohibited Varner and the Class Members from ignoring their
19 phones for work-related communications at any time during the workday. The Defendants
20 required Varner and all other Class Members to promptly respond to any incoming messages
21 from clients, drivers, and/or management. Defendants would discipline them if they did not
22 comply. Consequently, the Defendants forced Varner and the Class Members to forgo their 10-
23 minute, duty-free rest breaks.

24 68. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
25 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
26 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
27 Plaintiff and the other Class Members to take timely rest periods.

28 69. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
Class Members to take 10-minute, paid, duty-free rest breaks every four hours worked or major
fraction thereof. Defendants did not seek an exemption from the rest period protections of the
Wage Order from the California Division of Labor Standards Enforcement. Moreover,
Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they
failed to authorize and permit them to take 10-minute rest periods every four hours worked or
major fraction thereof.



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1 70. Plaintiff is informed and believes and thereon alleges that, at all relevant times
2 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
3 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
4 take all rest breaks required by California law.

5 71. Defendants failed to provide Plaintiff with all required rest breaks in accordance
6 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
7 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
8 which resulted in Defendants not providing the Class Members with all rest breaks required by
9 California law.

10 72. Defendants failed to pay Plaintiff the additional wages required by California
11 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and
12 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
13 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing
14 the Class Members with additional wages for all rest breaks not provided to them as required by
15 California Labor Code § 226.7.

16 73. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
17 have suffered damages in amounts subject to proof to the extent they were not paid additional
18 wages owed for all rest breaks not provided to them.

19 74. By reason of the above, Plaintiff and the Class Members are entitled to premium
20 wages for workdays in which one or more rest breaks were not provided to them pursuant to
21 California Labor Code § 226.7.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO INDEMNIFY**

24 **Lab. Code § 2802**

25 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

26 75. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

27 76. In pertinent part, California Labor Code § 2802(a) states: "An employer shall
28 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in
direct consequence of the discharge of his or her duties."

 77. California Labor Code § 1198 prohibits employers from employing their
employees under conditions prohibited by the Wage Order.



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1 78. At all relevant times, Defendants required Plaintiff and the Class Members to
2 incur certain business expenses in the course of performing their duties.

3 79. As described above, the Defendants required Varner and all other Class Members
4 to incur certain business expenses in the course of performing their duties. The Defendants
5 required Varner and all other Class Members to supply mobile phones to perform their job duties.
6 However, the Defendants did not provide these items and did not reimburse Varner and the other
7 Class Members for these items. The Defendants required Varner and all other Class Members to
8 use their personal cell phones to conduct company business and record their worktime and other
9 work-related events. The Defendants required Varner and all other Class Members to monitor
10 their personal mobile phones during all working hours, including rest and meal breaks for work-
11 related communications. The Defendants required Varner and all other Class Members to
12 conduct all company business on their personal cell phones but did not reimburse them for the
13 use of their personal cell phones or any telecom expenses incurred.

14 80. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
15 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
16 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
17 during the course of performing their duties.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

20 **Lab. Code § 226**

21 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

22 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
23 **STATEMENTS**

24 81. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 82. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members
26 were entitled to receive semi-monthly or at the time of each payment of wages, an accurate
27 itemized statement showing:

28 A. Gross wages earned;

 B. 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;



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1 C. The number of piece rate units earned and any applicable piece rate if the
2 employee is paid on a piece-rate basis;

3 D. All deductions, provided that all deductions made on written orders of the
4 Employee may be aggregated and shown as one item;

5 E. Net wages earned;

6 F. The inclusive dates of the period for which the employee is paid;

7 G. The name of the employee and his or her social security number, except
8 that by January 1, 2008, only the last four digits of his or her social security number or an
9 employee identification number other than a social security number may be shown on the
itemized statement;

10 H. The name and address of the legal entity that is the employer; and

11 I. All applicable hourly rates in effect during the pay period and the
12 corresponding number of hours worked at each hourly rate by the employee.

13 83. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
14 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury
15 if the employer fails to provide accurate and complete information as required by California
16 Labor Code § 226(a) and the employee cannot “promptly and easily determine” from the wage
statement alone one or more of the following:

17 A. The amount of the gross wages or net wages paid to the employee during
18 the pay period or any of the other information required to be provided on the itemized wage
19 statement pursuant to California Labor Code § 226(a);

20 B. Which deductions the employer made from gross wages to determine the
21 net wages paid to the employee during the pay period;

22 C. The name and address of the employer and, if the employer is a farm labor
23 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
and address of the legal entity that secured the services of the employer during the pay period;

24 D. The name of the employee and only the last four digits of his or her social
25 security number or an employee identification number other than a social security number; and

26 E. The number of piece-rate units earned and the piece rate.

27 84. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
28 means a reasonable person would be able to readily ascertain the information without reference



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1 to other documents or information.

2 85. As alleged herein, at all relevant times during the applicable limitations period,
3 Defendants violated California Labor Code section 226 because they did not properly and
4 accurately itemize each employee's gross wages earned, net wages earned, the total hours
5 worked, the corresponding number of hours worked at each rate by the employee, and other
6 requirements of California Labor Code section 226. Defendants knowingly and intentionally did
7 not issue either as a detachable part of the check, draft, or voucher paying the employee's wages,
8 or separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
9 Members that state all earned wages including minimum, regular, overtime, and doubletime
10 wages, all rest break premium wages earned, all meal premium wages earned, and other required
11 information.

12 86. Defendants' failure to provide Plaintiff and the other Class Members with
13 accurate wage statements was knowing and intentional. Defendants had the ability to provide
14 Plaintiff and the other Class Members with accurate wage statements but intentionally provided
15 wage statements that Defendants knew were not accurate.

16 87. As a result of being provided with inaccurate wage statements by Defendants,
17 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
18 wage statements were violated and they were misled about the amount of wages they had actually
19 earned and were owed. In addition, the absence of accurate information on their wage statements
20 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
21 and mathematical computations to determine the amounts of wages owed, has caused difficulty
22 and expense in attempting to reconstruct time and pay records and/or has led to the submission
23 of inaccurate information about wages to state and federal government agencies. Further,
24 Plaintiff and the other Class Members were not able to ascertain from the wage statements
25 whether Defendants complied with their obligations under California Labor Code section 226(a).

26 **SIXTH CAUSE OF ACTION**

27 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

28 **Lab. Code §§ 201, 202, and 203**

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

88. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

89. At all relevant times during the applicable limitations period, Plaintiffs and the



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1 Class have been non-exempt employees of Defendants and entitled to the benefits and
2 protections of California Labor Code §§ 201, 202, and 203, and the Wage Order.

3 90. Labor Code § 201 provides that all earned and unpaid wages of an employee who
4 is discharged are due and payable immediately at the time of discharge.

5 91. Labor Code § 202 provides that all earned and unpaid wages of an employee who
6 quits after providing at least 72-hours' notice before quitting are due and payable at the time of
7 quitting and that all earned and unpaid wages of an employee who quits without providing at
8 least 72-hours' notice before quitting are due and payable within 72 hours.

9 92. The Defendants failed to pay Varner and all other Class Members whose
10 employment ended all of the earned, but unpaid wages described above by the conclusion of
11 their employment with Varner, including earned minimum, regular, overtime and doubletime
12 wages, unprovided meal premium wages, unprovided rest break premium wages, and other
13 compensation.

14 93. By failing to pay such earned wages to Plaintiff and the Class Members,
15 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
16 § 201 or § 202.

17 94. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
18 and the Class Members all of their earned and unpaid wages (described above) have been willful
19 in that, at all relevant times, Defendants have deliberately maintained policies and practices that
20 violate the requirements of the Labor Code and the Wage Order, even though at all relevant
21 times, they have had the ability to comply with those legal requirements.

22 95. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf
23 of themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
24 penalties for each Class Member.

25 **SEVENTH CAUSE OF ACTION**

26 **UNFAIR COMPETITION**

27 **Bus. & Prof. Code §§ 17200, et seq.**

28 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

96. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

97. At all relevant times during the applicable limitations period, Plaintiff and the
Class Members have been employees of Defendants and entitled to the benefits and protections



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of the Business and Professions Code §§ 17200, *et seq.*

98. The unlawful conduct of Defendants alleged herein amount to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to compensate employees for all earned wages.

99. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class Members were deprived of earned wages, missed meal period premium wages, missed rest period premium wages, phone expenses, and comparable money and property.

100. Pursuant to California Business & Professions Code § 17203, Plaintiff and the Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

101. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

V. PRAYER FOR RELIEF

102. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for relief and judgment against Defendants as follows:

A. An order that the action be certified as a class action with respect to Plaintiff's claims for violations of California law;

B. An order that Plaintiff be appointed class representative;

C. An order that counsel for Plaintiff be appointed class counsel;

D. Unpaid wages, including minimum, regular, overtime, double-time, split shift, vacation, missed meal period, missed rest period, nonproductive time, rest and recovery time, and reporting time wages;

E. Liquidated damages;

F. Statutory penalties, including waiting time penalties;

G. Restitution;

H. Declaratory relief;



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- I. Actual damages;
J. Pre-judgment interest;
K. Costs of suit;
L. Reasonable attorneys' fees; and
M. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all other Class Members, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: March 10, 2023

By: 

DAVID G. SPIVAK,
JENICA P. LEONARD, Attorneys for
Plaintiff(s), MICHELLE R. VARNER,
and all others similarly situated



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