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

ROMAN RAMIREZ GALLEGOS, individually, and
on behalf of others similarly situated and Aggrieved
Employees pursuant to the California Private
Attorneys General Act; GABRIELA DE LA ROSA
SANCHEZ, on behalf of herself and others similarly
situated; and ALMA GARCIA, individually, and on
behalf of Aggrieved Employees pursuant to
the California Private Attorneys General Act,

Plaintiffs,

vs.

DOLEX DOLLAR EXPRESS, INC., a Texas
corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No.: 23STCV21872

CLASS ACTION

**PLAINTIFFS' FIRST AMENDED
COMPLAINT FOR:**

- 1. FAILURE TO PAY WAGES FOR
ALL HOURS WORKED AT
MINIMUM WAGE IN
VIOLATION OF LABOR CODE
SECTIONS 1194 AND 1197**
- 2. FAILURE TO PAY OVERTIME
WAGES FOR DAILY
OVERTIME WORKED AND/OR
FAILURE TO PAY OVERTIME**

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**WAGES AT THE PROPER
OVERTIME RATE OF PAY IN
VIOLATION OF LABOR CODE
SECTIONS 510 AND 1194**

- 3. FAILURE TO AUTHORIZE OR
PERMIT MEAL PERIODS IN
VIOLATION OF LABOR CODE
SECTIONS 512 AND 226.7**
- 4. FAILURE TO AUTHORIZE OR
PERMIT REST PERIODS IN
VIOLATION OF LABOR CODE
SECTION 226.7**
- 5. FAILURE TO INDEMNIFY
EMPLOYEES FOR
EMPLOYMENT-RELATED
LOSSES/EXPENDITURES IN
VIOLATION OF LABOR CODE
SECTION 2802**
- 6. FAILURE TO PROVIDE
COMPLETE AND ACCURATE
WAGE STATEMENTS IN
VIOLATION OF LABOR CODE
SECTION 226(a)**
- 7. FAILURE TO TIMELY PAY
EARNED WAGES DURING
EMPLOYMENT IN VIOLATION
OF LABOR CODE SECTIONS
204 AND 210**
- 8. FAILURE TO TIMELY PAY ALL
EARNED WAGES AND FINAL
PAYCHECKS DUE AT TIME OF
SEPARATION OF EMPLOYMENT
IN VIOLATION OF LABOR CODE
SECTIONS 201, 202, AND 203**
- 9. UNFAIR BUSINESS PRACTICES
IN VIOLATION OF BUSINESS
AND PROFESSIONS CODE
SECTIONS 17200, ET SEQ.**
- 10. CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE SECTIONS 2698, ET SEQ.**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiffs ROMAN RAMIREZ GALLEGOS (“GALLEGOS”), ALMA GARCIA (“GARCIA”), and GABRIELA DE LA ROSA SANCHEZ (“SANCHEZ”) (collectively, “Plaintiffs”), who allege and complain against Defendants DOLEX DOLLAR EXPRESS, INC.; and DOES 1 to 25, inclusive (collectively, “Defendants”) as follows:

I. INTRODUCTION

1. This is a class action lawsuit seeking unpaid wages and interest thereon for failure to pay wages for all hours worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure to pay overtime wages at the proper overtime rate of pay; failure to authorize or permit all legally required and/or compliant meal periods and/or pay meal period premium wages and/or pay meal period premium wages at the regular rate of compensation; failure to authorize or permit all legally required and/or compliant rest periods and/or pay rest period premium wages and/or pay rest period premium wages at the regular rate of compensation; indemnification for all necessary expenditures or losses incurred by employees in direct consequence of discharging their duties; statutory penalties for failure to provide complete and accurate wage statements; statutory penalties for failure to timely pay earned wages during employment; statutory waiting time penalties in the form of continuation wages for failure to timely pay employees all wages due upon separation of employment; injunctive relief and other equitable relief; reasonable attorneys’ fees pursuant to Labor Code sections 218.5, 226(e), and 1194; costs; and interest brought on behalf of Plaintiffs GALLEGOS and SANCHEZ and others similarly situated.

2. This is also an enforcement action under the California Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties on behalf of Plaintiffs GALLEGOS and GARCIA, the State of California, and all current and former non-exempt employees who worked for Defendants in the State of California at any time during the period from February 1, 2022 to final judgment (“Aggrieved Employees”).

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction.

1 4. This Court has jurisdiction over all Defendants because, upon information and
2 belief, Defendants are either citizens of California, have sufficient minimum contacts in California,
3 or otherwise intentionally availed themselves of the California market to render the exercise of
4 jurisdiction over them by the California courts consistent with traditional notions of fair play and
5 substantial justice. Further, no federal question is at issue because the claims asserted herein are
6 based solely on California law.

7 5. Venue is proper in this Court because, upon information and belief, Defendants
8 maintain offices, have agents, employ individuals, and/or transact business in the State of
9 California, County of Los Angeles. Moreover, many of the acts, events, and violations alleged
10 herein relating to Plaintiffs occurred in the State of California, County of Los Angeles.

11 **III. PARTIES**

12 6. At all times herein mentioned, Plaintiff GALLEGOS was and is a resident of Los
13 Angeles County in the State of California. Defendants, jointly and severally, employed Plaintiff
14 GALLEGOS as a non-exempt, hourly-paid Sales Associate from approximately May 2022 to
15 March 2023 based out of 1023 W Gardena Blvd, Gardena, California 90247.

16 7. At all times here mentioned, Plaintiff GARCIA was and is a resident of Los Angeles
17 County in the State of California. Defendants, jointly and severally, employed Plaintiff GARCIA
18 as a non-exempt, hourly-paid Sales Associate from approximately September 2019 to June 2022 at
19 their location in Numero Uno Market, 10455 Laurel Canyon Blvd., Pacoima, California 91331.

20 8. At all times here mentioned, Plaintiff SANCHEZ was and is a resident of Kern
21 County in the State of California. Defendants, jointly and severally, employed Plaintiff SANCHEZ
22 as a non-exempt, hourly-paid Sales Associate from approximately January 2015 to October 2020
23 at their branches located in Bakersfield, California.

24 9. At all times herein mentioned, Defendant DOLEX DOLLAR EXPRESS, INC., was
25 and is, upon information and belief, a Texas corporation, and at all times hereinafter mentioned, an
26 employer whose employees are engaged throughout Los Angeles County and the State of
27 California.

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1 10. Plaintiffs are unaware of the true names or capacities of the Defendants sued herein
2 under the fictitious names DOES 1 through 25 but will seek leave of this Court to amend the
3 complaint and serve such fictitiously named Defendants once their names and capacities become
4 known.

5 11. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts
6 and omissions alleged herein were performed by, or are attributable Defendants, each acting as the
7 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other
8 co-Defendants and within the course and scope of such agency, employment, joint venture, or
9 concerted activity with legal authority to act on the others' behalf. The acts of any and all
10 Defendants represent and were in accordance with Defendants' official policy.

11 12. At all relevant times, Defendants were the employers of Plaintiffs within the
12 meaning of all applicable state laws and statutes. Defendants directly or indirectly controlled or
13 affected the working conditions, wages, working hours, and conditions of employment of Plaintiffs
14 to make each of said Defendants employers and employers liable under the statutory provisions set
15 forth herein.

16 13. Defendants had the authority to hire and terminate Plaintiffs, the putative class
17 members, and the Aggrieved Employees, to set work rules and conditions governing their
18 employment, and to supervise their daily employment activities.

19 14. Defendants exercised sufficient authority over the terms and conditions of
20 Plaintiffs, the putative class members, and the Aggrieved Employees' employment for them to
21 be their joint employers.

22 15. Defendants directly hired and paid wages and benefits to Plaintiffs, the putative
23 class members, and the Aggrieved Employees.

24 16. Defendants continue to employ hourly paid and/or non-exempt employees within
25 the State of California.

26 17. At all relevant times, Defendants, and each of them, ratified the acts and omissions
27 complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the
28 acts and omissions of each and all the other Defendants in proximately causing the damages herein

1 alleged.

2 18. Plaintiffs are informed and believe, and thereon allege, that each of said Defendants
3 is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
4 occurrences, and transactions alleged herein.

5 **IV. PAGA ALLEGATIONS**

6 19. At all times set forth herein, PAGA was applicable to Plaintiffs GALLEGOS and
7 GARCIA's employment by Defendants.

8 20. PAGA provides that any provision of law under the California Labor Code that
9 provides for a civil penalty, including unpaid wages and premium wages, to be assessed and
10 collected by the LWDA for violations of the California Labor Code may, as an alternative, be
11 recovered through a civil action brought by an aggrieved employee on behalf of himself or herself
12 and other current or former employees pursuant to procedures outlined in California Labor Code
13 section 2699.3.

14 21. Pursuant to PAGA, a civil action may be brought by an "aggrieved employee," who
15 is any person employed by the alleged violator and against whom one or more of the alleged
16 violations was committed.

17 22. Plaintiffs GALLEGOS and GARCIA and the other employees are "Aggrieved
18 Employees" as defined by California Labor Code section 2699(c) because they are current or
19 former employees of Defendants against whom one of more of the alleged violations were
20 committed.

21 23. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
22 employee, including Plaintiffs GALLEGOS and GARCIA, may pursue a civil action arising under
23 PAGA after the following requirements have been met:

- 24 (a) The Aggrieved Employee shall give written notice by certified mail (hereinafter
25 "Employee's Notice") to the LWDA and the employer of the specific provisions of
26 the Labor Code alleged to have been violated, including the facts and theories to
27 support the alleged violations.

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1 (b) The LWDA shall provide notice (hereinafter “LWDA Response”) to the employer
2 and the aggrieved employee by certified mail that it does not intend to investigate
3 the alleged violation within sixty (60) calendar days of the postmark date of the
4 Employee’s Notice. Upon receipt of the LWDA Response, or if the LWDA
5 Response is not provided within sixty-five (65) calendar days of the postmark date
6 of the Employee’s Notice, the aggrieved employee may commence a civil action
7 pursuant to California Labor Code section 2699 to recover civil penalties in addition
8 to any other penalties to which the employee may be entitled.

9 24. On September 11, 2023, Plaintiffs GALLEGOS and GARCIA amended a notice
10 that was submitted on February 1, 2023 by electronic submission to the LWDA and by certified
11 mail to Defendants. **A true and correct copy of Plaintiffs GALLEGOS and GARCIA’S**
12 **amended Employee’s Notice is attached hereto as Exhibit A.**

13 25. Plaintiffs GALLEGOS and GARCIA did not receive an LWDA Response within
14 sixty-five (65) calendar days of providing the Employee’s Notice.

15 26. Therefore, the administrative prerequisites under California Labor Code section
16 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies for violations
17 of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194,
18 1197, 1197.1, 1198, 2800 and 2802 have been satisfied.

19 **V. DESCRIPTION OF ILLEGAL PAY PRACTICES**

20 27. Pursuant to the applicable Industrial Welfare Commission (“IWC”) Wage Order
21 (“Wage Order”), codified at California Code of Regulations, title 8, section 11090, Defendants are
22 employers of Plaintiffs within the meaning of Wage Order 4 and applicable Labor Code sections.
23 Therefore, each of these Defendants is jointly and severally liable for the wrongs complained of
24 herein in violation of the Wage Order and the Labor Code.

25 28. **Failure to pay wages for all hours worked at the legal minimum wage:**
26 Defendants employed many of their employees, including Plaintiffs, as hourly non-exempt
27 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
28 which includes all time that an employee is under the control of the employer and all time the

1 employee is suffered and permitted to work. This includes the time an employee spends, either
2 directly or indirectly, performing services which inure to the benefit of the employer.

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

6 30. Plaintiffs and similarly situated hourly non-exempt employees worked more minutes
7 per shift than Defendants credited them with having worked. Defendants failed to pay Plaintiffs and
8 similarly situated employees all wages at the applicable minimum wage for all hours worked due to
9 Defendants’ policies, practices, and/or procedures including, but not limited to:

10 (a) Plaintiffs and similarly situated employees are required to work off-the-clock
11 including, but not limited to, unlocking Defendants’ stores, deactivating the alarm systems, shutting
12 down computer systems, activating the alarm systems, responding to Defendants, co-workers, and
13 supervisors on work-related requests during purported meal breaks and after shifts ended, cleaning
14 and take out the trash at the end of shifts, selling money orders, locking Defendants’ stores after
15 clocking out for the end of their shifts, and booting up computer systems prior to being able to clock
16 in for their start of their shifts;

17 (b) Plaintiffs and similarly situated employees providing customer service after
18 clocking out;

19 (c) Defendants had a policy, practice, and procedure of rounding employee time
20 such that Plaintiffs and similarly situated employees were systematically unpaid and/or underpaid
21 for time worked over the course of their employment; and

22 (d) Failing to provide Plaintiffs and similarly situated employees who work
23 single-employee shifts, duty-free meal breaks by requiring them to remain on-duty during their off-
24 the-clock meal breaks without being paid for that time.

25 31. Plaintiffs and similarly situated employees were not paid for this time resulting in
26 Defendants’ failure to pay minimum wage for all the hours Plaintiffs and similarly situated
27 employees worked.

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1 32. Therefore, Defendants suffered, permitted, and required their hourly non-exempt
2 employees to be subject to Defendants' control without paying wages for that time. This resulted in
3 Plaintiffs and similarly situated employees working time for which they were not compensated any
4 wages, in violation of Labor Code sections 1194 and 1197, and Wage Order 4.

5 33. **Failure to pay wages for overtime hours worked at the overtime rate of pay**
6 **and/or failure to pay overtime wages at the proper overtime rate of pay:** Defendants employed
7 many of their employees, including Plaintiffs, as hourly non-exempt employees. In California, an
8 employer is required to pay hourly employees for all "hours worked," which includes all time that
9 an employee is under the control of the employer and all time the employee is suffered or permitted
10 to work. This includes the time an employee spends, either directly or indirectly, performing services
11 which inure to the benefit of the employer.

12 34. Labor Code sections 510 and 1194 and Wage Order 4 require an employer to
13 compensate employees at a higher rate of pay for hours worked in excess of eight (8) hours in a
14 workday, more than forty (40) hours in a workweek, and on any seventh consecutive day of work
15 in a workweek:

16 Any work in excess of eight hours in one workday and any work in excess of 40
17 hours in any one workweek and the first eight hours worked on the seventh day of
18 work in any one workweek shall be compensated at the rate of no less than one and
19 one-half times the regular rate of pay for an employee. Any work in excess of 12
20 hours in one day shall be compensated at the rate of no less than twice the regular
rate of pay for an employee. In addition, any work in excess of eight 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.

21 Labor Code section 510; Wage Order 4, §3.

22 35. Defendants failed to pay Plaintiffs and similarly situated employees all wages at the
23 applicable minimum wage for all hours worked due to Defendants' policies, practices, and/or
24 procedures including, but not limited to:

25 (a) Plaintiffs and similarly situated employees are required to work off-the-clock
26 including, but not limited to, unlocking Defendants' stores, deactivating the alarm systems, booting
27 up computer systems prior to being able to clock in for their start of their shifts, shutting down
28 computer systems, activating the alarm systems, responding to Defendants, co-workers, and

1 supervisors on work-related requests during purported meal breaks and after shifts ended, cleaning
2 and take out the trash at the end of shifts, selling money orders, locking Defendants' stores after
3 clocking out for the end of their shifts, and booting up computer systems prior to being able to clock
4 in for their start of their shifts

5 (b) Plaintiffs and similarly situated employees providing customer service after
6 clocking out;

7 (c) Defendants had a policy, practice and procedure of rounding employee time
8 such that Plaintiffs and similarly situated employees were systematically unpaid and/or underpaid
9 for time worked over the course of their employment; and

10 (d) Failing to provide Plaintiffs and similarly situated employees who work
11 single-employee shifts, duty-free meal breaks by requiring them to remain on-duty during their off-
12 the-clock meal breaks without being paid for that time.

13 36. Plaintiffs and similarly situated employees were not paid for this time resulting in
14 Defendants' failure to pay overtime wages for all the hours Plaintiffs and similarly situated
15 employees worked.

16 37. To the extent the employees had already worked 8 hours in the day and on
17 workweeks they had already worked 40 hours in a workweek, the employees should have been paid
18 overtime for this unpaid time. This resulted in hourly non-exempt employees working time which
19 should have been paid at the legal overtime rate but was not paid any wages in violation of Labor
20 Code sections 510 and 1194, and Wage Order 4.

21 38. Overtime is based upon an employee's regular rate of pay. "The regular rate at which
22 an employee is employed shall be deemed to include all remuneration for employment paid to, or
23 on behalf, of the employee." *See* Division of Labor Standards Enforcement – Enforcement Policies
24 and Interpretations Manual, Section 49.1.2.

25 39. In this case, Plaintiffs allege that when they and similarly situated employees earned
26 overtime wages, Defendants failed to pay them overtime wages at the proper overtime rate of pay
27 due to Defendants' failure to include all remuneration when calculating the overtime rate of pay.
28 Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all

1 remuneration such as sales commissions, for example, when calculating Plaintiffs' and similarly
2 situated employees' regular rate of pay for the purpose of paying overtime.

3 40. Defendants' foregoing policy, practice, and/or procedure resulted in Defendants
4 failing to pay Plaintiffs and similarly situated employees at their overtime rate of pay for all overtime
5 hours worked, in violation of Labor Code sections 510, 1194, and 1198, and the Wage Order.

6 41. **Failure to authorize or permit all legally required and compliant meal periods**
7 **and/or failure to pay meal period premium wages and/or failure to pay meal period premium**
8 **wages at the regular rate of compensation:** Defendants often employed hourly non-exempt
9 employees, including the named Plaintiffs and similarly situated employees, for shifts longer than
10 five (5) hours in length and shifts longer than ten (10) hours in length.

11 42. California law requires an employer to authorize or permit an uninterrupted meal
12 period of no less than thirty (30) minutes no later than the end of the employee's fifth hour of work
13 and a second meal period no later than the employee's tenth hour of work. Labor Code §512; Wage
14 Order 4, §11. If the employee is not relieved of all duties during a meal period, the meal period shall
15 be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period
16 is only permitted when (1) the nature of the work prevents an employee from being relieved of all
17 duty and (2) the parties have a written agreement agreeing to on-duty meal periods. If the employee
18 is not free to leave the work premises or worksite during the meal period, even if the employee is
19 relieved of all other duty during the meal period, the employee is subject to the employer's control
20 and the meal period is counted as time worked. If an employer fails to provide an employee a meal
21 period in accordance with the law, the employer must pay the employee one (1) hour of pay at the
22 employee's regular rate of pay for each workday that a legally required and compliant meal period
23 was not provided. Labor Code §226.7; Wage Order 4, §11.

24 43. Here, Plaintiffs and similarly situated employees worked shifts long enough to entitle
25 them to meal periods under California law. Nevertheless, Defendants employed policies, practices,
26 and/or procedures that resulted in their failure to authorize or permit meal periods to Plaintiffs and
27 similarly situated employees of no less than thirty (30) minutes for each five-hour period of work
28 as required by law. Such policies, practices, and/or procedures included, but were not limited to:

1 (a) Failing to provide Plaintiffs and similarly situated employees duty-free meal
2 breaks;

3 (b) Requiring Plaintiffs and similarly situated employees to work through their
4 lunch breaks, permitting and/or requiring Plaintiffs and similarly situated employees to take late
5 lunch breaks, permitting and/or requiring Plaintiffs and similarly situated employees to take short
6 lunch breaks, interrupting and/or allowing others to interrupt Plaintiffs and similarly situated
7 employees during their lunch breaks, failing to relieve Plaintiffs and similarly situated employees
8 of all duties during their lunch breaks, and restricting Plaintiffs and similarly situated employees
9 from leaving the premises during their lunch breaks;

10 (c) Because of Defendants' rounding policy, meal breaks were at times
11 incorrectly recorded as compliant, when in reality they were untimely and/or cut short.

12 44. Additionally, Defendants failed to pay Plaintiffs and similarly situated employees a
13 meal period premium wage of one (1) additional hour of pay at their regular rate of compensation
14 for each workday the employees did not receive all legally required and compliant meal periods.
15 Defendants employed policies and procedures which ensured that employees did not receive any
16 meal period premium wages to compensate them for workdays in which they did not receive all
17 legally required and compliant meal periods.

18 45. Finally, on occasions when Defendants paid Plaintiffs and similarly situated
19 employees a "premium" wage for late, missed, short, on-premise, on-duty, and/or interrupted meal
20 periods, Defendants failed to pay the one (1) additional hour of pay at Plaintiffs' and similarly
21 situated employees' regular rate of compensation. Specifically, Defendants maintained a policy,
22 practice, and/or procedure of failing to include all remuneration such as sales commissions, for
23 example, when calculating Plaintiffs' and similarly situated employees' regular rate of pay for the
24 purpose of paying meal period premium wages.

25 46. The aforementioned policies, practices, and/or procedures of Defendants resulted in
26 Plaintiffs and similarly situated employees not being provided with all legally required and
27 compliant meal periods and/or not receiving premium wages to compensate them for such instances,
28 all in violation of California law.

1 47. **Failure to authorize and permit all legally required and compliant rest periods**
2 **and/or failure to pay rest period premiums and/or failure to pay rest period premium wages**
3 **at the regular rate of compensation:** Defendants often employed non-exempt employees,
4 including the named Plaintiffs and similarly situated employees, for shifts of least three-and-a-half
5 (3.5) hours.

6 48. California law requires every employer to authorize and permit an employee a rest
7 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor Code
8 §226.7; Wage Order 4, §12. If the employer fails to authorize or permit a required rest period, the
9 employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation
10 for each workday the employer did not authorize or permit a legally required rest period. *Id.* Under
11 California law, “[e]mployees are entitled to 10 minutes’ rest for shifts from three and one-half to six
12 hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of
13 more than 10 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)*
14 (2012) 53 Cal.4th 1004, 1029; Labor Code §226.7; Wage Order 4, §12. Rest periods, insofar as
15 practicable, shall be in the middle of each work period. Wage Order 4, §12. Additionally, the rest
16 period requirement “obligates employers to permit – and authorizes employees to take – off-duty
17 rest periods.” *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during
18 rest periods employers must relieve employees of all duties and relinquish control over how
19 employees spend their time. *Id.*

20 49. In this case, Plaintiffs and similarly situated employees regularly worked shifts of
21 more than three-and-a-half (3.5) hours. Nevertheless, Defendants employed policies, practices,
22 and/or procedures that resulted in their failure to authorize or permit all legally required and
23 compliant rest periods to Plaintiffs and similarly situated employees. Such policies, practices, and/or
24 procedures included, but were not limited to:

25 (a) Failing to provide Plaintiffs and similarly situated employees duty-free rest
26 breaks;

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1 (b) Defendants routinely required Plaintiffs and similarly situated employees to
2 work three and one-half (3 1/2) or more hours without authorizing or permitting a compliant ten
3 (10) minute rest period per each four (4) hour period, or major fraction thereof, worked;

4 (c) Defendants willfully required, suffered, and permitted Plaintiffs and similarly
5 situated employees to work during what should have been their rest periods. Defendants also failed
6 to relieve Plaintiffs and similarly situated employees of all duties for ten (10) minutes as required
7 for compliant rest breaks; and

8 (d) Failing to provide Plaintiffs and similarly situated employees duty-free rest
9 breaks by requiring them to remain on Defendants' premises during their rest breaks.

10 50. Additionally, Defendants failed to pay Plaintiffs and similarly situated employees a
11 rest period premium wage of one (1) additional hour of pay at their regular rate of compensation for
12 each workday the employees did not receive all legally required and compliant rest periods.
13 Defendants employed policies and procedures which ensured that employees did not receive any
14 rest period premium wages to compensate them for workdays in which they did not receive all
15 legally required and compliant rest periods.

16 51. Finally, on occasions when Defendants did pay Plaintiffs and similarly situated
17 employees a "premium" wage for late, missed, short, on-premise, on-duty, and/or interrupted rest
18 periods, Defendants failed to pay the one (1) additional hour of pay at Plaintiffs' and similarly
19 situated employees' regular rate of compensation. Specifically, Defendants maintained a policy,
20 practice, and/or procedure of failing to include all remuneration such as sales commissions, for
21 example, when calculating Plaintiffs' and similarly situated employees' regular rate of pay for the
22 purpose of paying rest period premiums.

23 52. The aforementioned policies, practices, and/or procedures of Defendants resulted in
24 Plaintiffs and similarly situated employees not being provided with all legally required and
25 compliant rest periods and/or not receiving premium wages to compensate them for such instances,
26 all in violation of California law.

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1 53. **Failure to indemnify employees for losses and expenditures incurred as part of**
2 **their employment:** Labor Code section 2802(a) states that “[a]n employer shall indemnify his or
3 her employee for all necessary expenditures or losses incurred by the employee in direct
4 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
5 employer...” An employer is prohibited from passing the ordinary business expenses and losses of
6 the employer onto the employee. (Labor Code section 2802).

7 54. Defendants employed policies, practices, and/or procedures of impermissibly
8 passing business-related expenses to Plaintiffs and similarly situated employees. These policies,
9 practices, and/or procedures included, but were not limited to, requiring Plaintiffs and similarly
10 situated employees to use or purchase their own tools and/or resources in order to work for
11 Defendants, including but not limited to mileage, vehicle use, personal protective equipment like
12 masks and thermometers during the COVID-19 pandemic, and personal cell phone (including both
13 telephone use and cellular data use) for work-related purposes - without reimbursing Plaintiffs and
14 similarly situated employees for such use.

15 55. The costs incurred by Plaintiffs and similarly situated employees to use or purchase
16 their own tools and/or resources for their mandatory compliance with Defendants’ aforementioned
17 policies, practices, and/or procedures were significant as a result of their employment with
18 Defendants.

19 56. Defendants employed policies and procedures which ensured Plaintiffs and similarly
20 situated employees would not receive indemnification for the aforementioned necessary
21 expenditures incurred as a result of their employment with Defendants.

22 57. Defendants’ aforementioned policies, practices, and/or procedures resulted in
23 Plaintiffs and similarly situated employees not receiving indemnification for employment-related
24 expenditures, in violation of Labor Code section 2802.

25 58. **Failure to provide complete and accurate wage statements:** Labor Code section
26 226(a) provides, *inter alia*, that, upon paying an employee his or her wages, the employer must
27 “furnish each of his or her employees ... an itemized statement in writing showing (1) gross wages
28 earned, (2) total hours worked by the employee, except for any employee whose compensation is

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

59. As a derivative of Plaintiffs’ claims above, Plaintiffs allege that Defendants failed to provide accurate wage and hour statements to them and other similarly situated employees who were not provided with legally required and/or compliant meal and rest breaks and who, therefore, did not receive all their earned wages (including minimum wages, overtime wages, meal period premium wages, and rest period premium wages) in violation of Labor Code section 226(a).

60. **Failure to timely pay earned wages during employment:** In California, wages must be paid at least twice during each calendar month on days designated in advance by the employer as regular paydays, subject to some exceptions. Labor Code § 204(a). Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7) calendar days following the close of the payroll period in which wages were earned. Labor Code § 204(d).

61. As a derivative of Plaintiffs’ claims above, Plaintiffs allege that Defendants failed to timely pay Plaintiffs’ and similarly situated employees’ earned wages (including minimum wages, overtime wages, meal period premium wages, and rest period premium wages), in violation of Labor Code section 204.

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62. Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay Plaintiffs and similarly situated employees their earned wages within the applicable time frames outlined in Labor Code section 204.

63. **Failure to timely pay final wages:** An employer is required to pay all unpaid wages timely after an employee's employment ends. The wages are due immediately upon termination or within seventy-two (72) hours of resignation. Labor Code sections 201 and 202.

64. As a result of the aforementioned violations of the Labor Code, Plaintiffs allege that they, and other similarly situated employees, were not paid their final wages in a timely manner as required by Labor Code section 203. Minimum wages for all hours worked, overtime wages for overtime hours worked, meal period premium wages, and/or rest period premium wages (all described above) were not paid at the time of Plaintiffs' and other similarly situated employees' separation of employment, whether voluntarily or involuntarily, as required by Labor Code sections 201, 202, and 203.

VI. CLASS DEFINITIONS AND CLASS ALLEGATIONS

65. Plaintiffs GALLEGOS and SANCHEZ bring this action on behalf of themselves, on behalf of others similarly situated, and on behalf of the general public, and as members of a Class defined as follows:

A. **Minimum Wage Class:** All current and former non-exempt employees who did not sign an arbitration agreement and who worked for Defendants in California at any time during the period April 12, 2019 through the present, who were not paid at least minimum wage for all time they were subject to Defendants' control.

B. **Overtime Class:** All current and former non-exempt employees who did not sign an arbitration agreement and who worked for Defendants in California at any time during the period April 12, 2019 through the present, who worked more than eight (8) hours in a workday, forty (40) hours in a workweek, and/or seven (7) days in a workweek, to whom Defendants did not pay overtime wages.

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1 C. **Regular Rate Class:** All current and former non-exempt employees who did
2 not sign an arbitration agreement and who worked for Defendants in California at any time during
3 the period April 12, 2019 through the present, who worked more than eight (8) hours in a workday,
4 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, who received
5 additional remuneration during pay periods in which they were paid overtime wages, and whose
6 compensation did not include such additional remuneration when Defendants calculated those
7 employees' overtimes wages.

8 D. **Meal Period Class:** All current and former non-exempt employees who did
9 not sign an arbitration agreement and who worked for Defendants in California at any time during
10 the period April 12, 2019 through the present, who worked shifts more than five (5) hours yet
11 Defendants failed to authorize or permit all required duty-free meal periods of not less than thirty
12 (30) minutes.

13 E. **Meal Period Premium Wages Class:** All current and former non-exempt
14 employees who did not sign an arbitration agreement and who worked for Defendants in California
15 at any time during the period April 12, 2019 through the present, who received additional
16 remuneration during pay periods in which they were paid meal period premium wages and whose
17 regular rate of pay did not include such additional remuneration when Defendants calculated those
18 employees' meal period premium wages.

19 F. **Rest Period Class:** All current and former non-exempt employees who did
20 not sign an arbitration agreement and who worked for Defendants in California at any time during
21 the period April 12, 2019 through the present, who worked shifts of at least three-and-a-half (3.5)
22 hours who did not receive all required duty-free rest periods of a net ten (10) minutes for every four
23 (4) hours worked or major fraction thereof.

24 G. **Rest Period Premium Wages Class:** All current and former non-exempt
25 employees who did not sign an arbitration agreement and who worked for Defendants in California
26 at any time during the period April 12, 2019 through the present, who received additional
27 remuneration during pay periods in which they were paid rest period premium wages and whose
28 regular rate of pay did not include such additional remuneration when Defendants calculated those

employees' rest period premium wages.

H. **Indemnification Class:** All current and former non-exempt employees who did not sign an arbitration agreement and who worked for Defendants in California at any time during the period April 12, 2019 through the present, who did not receive indemnification to reimburse them for the necessary expenditures incurred in the discharge of their duties.

I. **Wage Statement Class:** All current and former non-exempt employees who did not sign an arbitration agreement and who worked for Defendants in California at any time during the period April 12, 2019 through the present, who received inaccurate or incomplete wage and hour statements.

J. **Pay Day Class:** All current and former non-exempt employees who did not sign an arbitration agreement and who worked for Defendants in California at any time during the period April 12, 2019 through the present, who were not timely paid earned wages during their employment.

K. **Waiting Time Class:** All current and former non-exempt employees who did not sign an arbitration agreement and who worked for Defendants in California at any time during the period April 12, 2019 through the present, who did not receive payment of all unpaid wages upon separation of employment within the statutory time period.

L. **California Class:** All aforementioned classes are herein collectively referred to as the "California Class."

66. There is a well-defined community of interest in the litigation and the classes are ascertainable:

A. **Numerosity:** While the exact number of class members in each class is unknown to Plaintiffs GALLEGOS and SANCHEZ at this time, the classes are so numerous that the individual joinder of all members is impractical under the circumstances of this case.

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

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1 i. Whether Defendants violated Labor Code sections 1194 and 1197 by
2 not paying wages at the minimum wage rate for all time that the Minimum Wage Class Members
3 were subject to Defendants' control;

4 ii. Whether Defendants violated Labor Code sections 510 and 1194 by
5 not paying the Overtime Class Members at the applicable overtime rate for working in excess of
6 eight (8) hours in a workday, in excess of forty (40) hours in a workweek, and/or seven (7) days in
7 a workweek;

8 iii. Whether Defendants violated Labor Code sections 510 and 1194 by
9 not paying the Regular Rate Class Members at the applicable overtime rate for working in excess
10 of eight (8) hours in a workday, in excess of forty (40) hours in a workweek, and/or seven (7) days
11 in a workweek;

12 iv. Whether Defendants violated Labor Code sections 512 and 226.7, as
13 well as the applicable Wage Order, by employing the Meal Period Class Members without providing
14 all compliant and/or required meal periods and/or paying meal period premium wages;

15 v. Whether Defendants violated Labor Code sections 512 and 226.7, as
16 well as the applicable Wage Order, by employing the Meal Period Premium Wages Class Members
17 without paying meal period premium wages at the proper rate;

18 vi. Whether Defendants violated Labor Code section 226.7 by employing
19 the Rest Period Class Members without providing all compliant and/or required rest periods and/or
20 paying rest period premium wages;

21 vii. Whether Defendants violated Labor Code section 226.7, as well as
22 the applicable Wage Order, by employing the Rest Period Premium Wages Class Members without
23 paying rest period premium wages at the proper rate;

24 viii. Whether Defendants violated Labor Code section 2802 by failing to
25 provide Indemnification Class Members with reimbursement of costs to compensate them for the
26 necessary expenditures incurred in the discharge of their duties;

27 ix. Whether Defendants failed to provide the Wage Statement Class
28 Members with accurate itemized statements at the time they received their itemized statements;

1 x. Whether Defendants violated Labor Code section 204 by employing
2 Pay Day Class Members without timely paying them all earned wages during their employment;

3 xi. Whether Defendants failed to provide the Waiting Time Class
4 Members with all of their earned wages upon separation of employment within the statutory time
5 period;

6 xii. Whether Defendants committed unlawful business acts or practice
7 within the meaning of Business and Professions Code sections 17200, *et seq.*;

8 xiii. Whether Class Members are entitled to unpaid wages, penalties, and
9 other relief pursuant to their claims;

10 xiv. Whether, as a consequence of Defendants' unlawful conduct, the
11 Class Members are entitled to restitution, and/or equitable relief; and

12 xv. Whether Defendants' affirmative defenses, if any, raise any common
13 issues of law or fact as to Plaintiffs GALLEGOS and SANCHEZ and as to Class Members as a
14 whole.

15 C. **Typicality:** Plaintiffs GALLEGOS and SANCHEZ's claims are typical of
16 the claims of the class members in each of the classes. Plaintiffs GALLEGOS and SANCHEZ and
17 members of the Minimum Wage Class sustained damages arising out of Defendants' failure to pay
18 wages at least at minimum wage for all time the employees were subject to Defendants' control.
19 Plaintiffs GALLEGOS and SANCHEZ and members of the Overtime Wage Class sustained
20 damages arising out of Defendants' failure to pay overtime wages for overtime hours worked.
21 Plaintiffs GALLEGOS and SANCHEZ and members of the Regular Rate Class sustained damages
22 arising out of Defendants' failure to pay overtime wages at the proper rate for overtime hours
23 worked. Plaintiffs GALLEGOS and SANCHEZ and members of the Meal Period Class sustained
24 damages arising out of Defendants' failure to provide non-exempt employees with all required meal
25 periods and/or meal periods that were duty-free and not less than thirty (30) minutes and/or failure
26 to pay meal period premium wages as compensation. Plaintiffs GALLEGOS and SANCHEZ and
27 members of the Meal Period Premium Wages Class sustained damages arising out of Defendants'
28 failure to pay meal period premium wages at the proper rate. Plaintiffs GALLEGOS and SANCHEZ

1 and members of the Rest Period Class sustained damages arising out of Defendants' failure to
2 provide non-exempt employees with all required rest periods and/or rest periods that were duty-free
3 and of a net ten (10) minutes and/or failure to pay rest period premium wages as compensation.
4 Plaintiffs GALLEGOS and SANCHEZ and members of the Rest Period Wages Class sustained
5 damages arising out of Defendants' failure to pay rest period premium wages at the proper rate.
6 Plaintiffs GALLEGOS and SANCHEZ and members of the Indemnification Class sustained
7 damages from Defendants' failure to provide reimbursement of costs to compensate them for the
8 necessary expenditures incurred in the discharge of their duties. Plaintiffs GALLEGOS and
9 SANCHEZ and members of the Wage Statement Class sustained damages arising out of
10 Defendants' failure to furnish them with accurate itemized wage statements in compliance with
11 Labor Code section 226(a). Plaintiffs GALLEGOS and SANCHEZ and members of the Pay Day
12 Class sustained damages arising out of Defendants' failure to timely pay them all wages earned
13 during their employment in compliance with Labor Code section 204. Plaintiffs GALLEGOS and
14 SANCHEZ and members of the Waiting Time Class sustained damages arising out of Defendants'
15 failure to provide all unpaid yet earned wages due upon separation of employment within the
16 statutory time limit.

17 D. **Adequacy of Representation:** Plaintiffs GALLEGOS and SANCHEZ will
18 fairly and adequately protect the interests of the members of each class. Plaintiffs GALLEGOS and
19 SANCHEZ have no interests that are adverse to the interests of the other class members.

20 E. **Superiority:** A class action is superior to other available means for the fair
21 and efficient adjudication of this controversy. Because individual joinder of all members of each
22 class is impractical, class action treatment will permit a large number of similarly situated persons
23 to prosecute their common claims in a single forum simultaneously, efficiently, and without the
24 unnecessary duplication of effort and expense that numerous individual actions would engender.
25 The expenses and burdens of individual litigation would make it difficult or impossible for
26 individual members of each class to redress the wrongs done to them, while important public
27 interests will be served by addressing the matter as a class action. The cost to and burden on the
28 court system of adjudication of individualized litigation would be substantial, and substantially more

than the costs and burdens of a class action. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

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

FIRST CAUSE OF ACTION

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

WAGE RATE IN VIOLATION OF LABOR CODE SECTIONS 1194 AND 1197

(Against All Defendants by Plaintiffs GALLEGOS and SANCHEZ

and the Minimum Wage Class)

67. Plaintiffs incorporate all paragraphs above as though fully set forth herein.

68. At all times relevant to this Complaint, Plaintiffs GALLEGOS and SANCHEZ and the Minimum Wage Class were hourly non-exempt employees of Defendants.

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

70. Defendants' policies, practices, and/or procedures required Plaintiffs GALLEGOS and SANCHEZ and the Minimum Wage Class to be engaged, suffered, or permitted to work without being paid wages for all of the time in which they were subject to Defendants' control.

71. Defendants' employed policies, practices, and/or procedures including, but not limited to:

(a) Plaintiffs GALLEGOS and SANCHEZ and the Minimum Wage Class are required to work off-the-clock including, but not limited to, unlocking Defendants' stores, deactivate the alarm systems, and booting up computer systems prior to being able to clock in for their start of

1 their shifts;

2 (b) Plaintiffs GALLEGOS and SANCHEZ and the Minimum Wage Class are
3 required to work off-the-clock including, but not limited to, shutting down computer systems,
4 activate the alarm systems, and locking Defendants' stores after clocking out for the end of their
5 shifts;

6 (c) Plaintiffs GALLEGOS and SANCHEZ and the Minimum Wage Class
7 providing customer service after clocking out;

8 (d) Defendants had a policy, practice, and procedure of rounding employee time
9 such that Plaintiffs GALLEGOS and SANCHEZ and the Minimum Wage Class were systematically
10 unpaid and/or underpaid for time worked over the course of their employment; and

11 (e) Failing to provide Plaintiffs GALLEGOS and SANCHEZ and the Minimum
12 Wage Class who work single-employee shifts, duty-free meal breaks by requiring them to remain
13 on-duty during their off-the-clock meal breaks without being paid for that time.

14 72. Plaintiffs GALLEGOS and SANCHEZ and the Minimum Wage Class were not paid
15 for this time resulting in Defendants' failure to pay minimum wage for all hours Plaintiffs
16 GALLEGOS and SANCHEZ and the Minimum Wage Class worked.

17 73. As a result of Defendants' unlawful conduct, Plaintiffs GALLEGOS and SANCHEZ
18 and the Minimum Wage Class have suffered damages in an amount subject to proof, to the extent
19 that they were not paid wages at a minimum wage rate for all hours worked.

20 74. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiffs GALLEGOS and
21 SANCHEZ and the Minimum Wage Class are entitled to recover unpaid minimum wage, interest
22 thereon, liquidated damages in the amount of their unpaid minimum wage, and attorneys' fees and
23 costs.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE**

26 **SECTIONS 510 AND 1194**

27 **(Against All Defendants by Plaintiffs GALLEGOS and SANCHEZ,**

28 **the Overtime Class, and the Regular Rate Class)**

1 75. Plaintiffs incorporate all paragraphs above as though fully set forth herein.

2 76. At times relevant to this Complaint, Plaintiffs GALLEGOS and SANCHEZ, the
3 Overtime Class, and the Regular Rate Class were hourly non-exempt employees of Defendants,
4 covered by Labor Code sections 510 and 1194 and Wage Order 4.

5 77. Pursuant to Labor Code sections 510 and 1194 and Wage Order 4, hourly non-
6 exempt employees are entitled to receive a higher rate of pay for all hours worked in excess of eight
7 (8) hours in a workday, forty (40) hours in a workweek, and on the seventh day of work in a
8 workweek.

9 78. Labor Code section 510, subdivision (a), states in relevant part:

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

21 79. Further, Labor Code section 1198 provides,

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

26 80. Despite California law requiring employers to pay employees a higher rate of pay for
27 all hours worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek,
28 and on the seventh day of work in a workweek, Defendants failed to pay all overtime wages to
Plaintiffs GALLEGOS and SANCHEZ and the Overtime Class for their daily overtime hours
worked.

 81. Specifically, Defendants' employed policies, practices, and/or procedures including,
but not limited to:

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1 (a) Plaintiffs GALLEGOS and SANCHEZ and the Overtime Class are required
2 to work off-the-clock including, but not limited to, unlocking Defendants' stores, deactivate the
3 alarm systems, and booting up computer systems prior to being able to clock in for their start of
4 their shifts;

5 (b) Plaintiffs GALLEGOS and SANCHEZ and the Overtime Class are required
6 to work off-the-clock including, but not limited to, shutting down computer systems, activate the
7 alarm systems, and locking Defendants' stores after clocking out for the end of their shifts;

8 (c) Plaintiffs GALLEGOS and SANCHEZ and the Overtime Class providing
9 customer service after clocking out;

10 (d) Defendants had a policy, practice, and procedure of rounding employee time
11 such that Plaintiffs GALLEGOS and SANCHEZ and the Overtime Class were systematically unpaid
12 and/or underpaid for time worked over the course of their employment; and

13 (e) Failing to provide Plaintiffs GALLEGOS and SANCHEZ and the Overtime
14 Class who work single-employee shifts, duty-free meal breaks by requiring them to remain on-duty
15 during their off-the-clock meal breaks without being paid for that time.

16 82. Plaintiffs GALLEGOS and SANCHEZ and the Overtime Class were not paid for this
17 time.

18 83. To the extent that the foregoing unpaid time resulted from Plaintiffs GALLEGOS
19 and SANCHEZ and the Overtime Class being subject to the control of Defendants when they
20 worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or
21 seven days in a workweek, Defendants failed to pay them at their overtime rate of pay for all the
22 overtime hours they worked.

23 84. Overtime is based upon an employee's regular rate of pay. "The regular rate at which
24 an employee is employed shall be deemed to include all remuneration for employment paid to, or
25 on behalf, of the employee." *See* Division of Labor Standards Enforcement – Enforcement Policies
26 and Interpretations Manual, Section 49.1.2.

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1 85. In this case, when Plaintiffs GALLEGOS and SANCHEZ and Regular Rate Class
2 Members earned overtime wages, Defendants failed to pay them overtime wages at the proper
3 overtime rate of pay due to Defendants' failure to include all remuneration when calculating the
4 overtime rate of pay. Specifically, Defendants maintained a policy, practice, and/or procedure of
5 failing to include all remuneration such as service charges, for example, when calculating Plaintiffs
6 GALLEGOS and SANCHEZ's and Regular Rate Class Members' regular rate of pay for the purpose
7 of paying overtime.

8 86. As a result of Defendants' unlawful conduct, Plaintiffs GALLEGOS and SANCHEZ,
9 the Overtime Class, and the Regular Rate Class have suffered damages in an amount subject to
10 proof, to the extent that they were not paid at their proper overtime rate of pay for all hours worked
11 which constitute overtime.

12 87. Pursuant to Labor Code section 1194, Plaintiffs GALLEGOS and SANCHEZ, the
13 Overtime Class, and the Regular Rate Class are entitled to recover the full amount of their unpaid
14 overtime wages, prejudgment interest, and attorneys' fees and costs.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS IN VIOLATION OF LABOR**
17 **CODE SECTIONS 512 AND 226.7**

18 **(Against All Defendants by Plaintiffs GALLEGOS and SANCHEZ,**
19 **the Meal Period Class, and the Meal Period Premium Wages Class)**

20 88. Plaintiffs incorporate all paragraphs above as though fully set forth herein.

21 89. At all times relevant to this Complaint, Plaintiffs GALLEGOS and SANCHEZ, the
22 Meal Period Class, and the Meal Period Premium Wages Class were hourly non-exempt employees
23 of Defendants, covered by Labor Code sections 512 and 226.7 and the Wage Order.

24 90. California law requires an employer to authorize or permit an employee an
25 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
26 all duties and the employer relinquishes control over the employee's activities no later than the end
27 of the employee's fifth hour of work and a second meal period no later than the employee's tenth
28 hour of work. Labor Code sections 226.7 and 512; Wage Order 4, §11; *Brinker Rest. Corp. v. Super*

1 *Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. If the employer requires the employee to remain at the
2 work site or facility during the meal period, the meal period must be paid. This is true even where
3 the employee is relieved of all work duties during the meal period. *Bono Enterprises, Inc. v.*
4 *Bradshaw* (1995) 32 Cal.App.4th 968. Labor Code section 226.7 provides that if an employee does
5 not receive a required meal or rest period that “the employer shall pay the employee one additional
6 hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest
7 period is not provided.”

8 91. In this case, Plaintiffs GALLEGOS and SANCHEZ and the Meal Period Class
9 worked shifts long enough to entitle them to meal periods under California law. Nevertheless,
10 Defendants employed policies, practices, and/or procedures that resulted in their failure to authorize
11 or permit meal periods to Plaintiffs GALLEGOS and SANCHEZ and the Meal Period Class of no
12 less than thirty (30) minutes for each five-hour period of work as required by law. Such policies,
13 practices, and/or procedures included, but were not limited to:

14 a. Failing to provide Plaintiffs GALLEGOS and SANCHEZ and the Meal
15 Period Class duty-free meal breaks;

16 b. Requiring Plaintiffs GALLEGOS and SANCHEZ and similarly situated
17 employees to work through their lunch breaks, permitting and/or requiring Plaintiffs GALLEGOS
18 and SANCHEZ and similarly situated employees to take late lunch breaks, permitting and/or
19 requiring Plaintiffs GALLEGOS and SANCHEZ and similarly situated employees to take short
20 lunch breaks, interrupting and/or allowing others to interrupt Plaintiffs GALLEGOS and SANCHEZ
21 and similarly situated employees during their lunch breaks, failing to relieve Plaintiffs GALLEGOS
22 and SANCHEZ and similarly situated employees of all duties during their lunch breaks, and
23 restricting Plaintiffs GALLEGOS and SANCHEZ and similarly situated employees from leaving
24 the premises during their lunch breaks;

25 c. Because of Defendants' rounding policy, meal breaks were at times
26 incorrectly recorded as compliant, when in reality they were untimely and/or cut short.

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1 92. Additionally, Defendants failed to pay Plaintiffs GALLEGOS and SANCHEZ and
2 the Meal Period Class one (1) hour of pay at their regular rate of pay for each workday they did not
3 receive all legally required and legally compliant meal periods. Defendants lacked a policy and
4 procedure for compensating Plaintiffs GALLEGOS and SANCHEZ and the Meal Period Class with
5 premium wages when they did not receive all legally required and legally compliant meal periods.

6 93. Finally, on occasions when Defendants paid Plaintiffs GALLEGOS and SANCHEZ
7 and the Meal Period Premium Wages Class a “premium” wage for late, missed, short, on-premise,
8 on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1) additional hour of pay
9 at Plaintiffs GALLEGOS and SANCHEZ’s and the Meal Period Premium Wages Class’ regular
10 rate of compensation. Specifically, Defendants maintained a policy, practice, and/or procedure of
11 failing to include all remuneration such as service charges, for example, when calculating Plaintiffs
12 GALLEGOS and SANCHEZ’s and the Meal Period Premium Wages Class’ regular rate of pay for
13 the purpose of paying meal period premiums.

14 94. Defendants’ unlawful conduct alleged herein occurred in the course of employment
15 of Plaintiffs GALLEGOS and SANCHEZ, the Meal Period Class, and the Meal Period Premium
16 Wages Class and such conduct has continued through the filing of this Complaint.

17 95. Because Defendants failed to provide employees with meal periods in compliance
18 with the law, Defendants are liable to Plaintiffs GALLEGOS and SANCHEZ, the Meal Period
19 Class, and the Meal Period Premium Wages Class for one (1) hour of additional pay at the regular
20 rate of compensation for each workday that Defendants did not provide all legally required and
21 legally compliant meal periods, pursuant to Labor Code section 226.7 and the Wage Order.

22 96. Plaintiffs GALLEGOS and SANCHEZ, on behalf of themselves, the Meal Period
23 Class, and the Meal Period Premium Wages Class seek damages and all other relief allowable,
24 including a meal period premium wage for each workday Defendants failed to provide all legally
25 required and legally compliant meal periods, plus pre-judgment interest.

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FOURTH CAUSE OF ACTION

**FAILURE TO AUTHORIZE OR PERMIT REQUIRED REST PERIODS IN VIOLATION
OF LABOR CODE SECTION 226.7**

**(Against All Defendants by Plaintiffs GALLEGOS and SANCHEZ,
the Rest Period Class, and the Rest Period Premium Wages Class)**

97. Plaintiffs incorporate all paragraphs above as though fully set forth herein.

98. At all times relevant to this Complaint, Plaintiffs GALLEGOS and SANCHEZ, the Rest Period Class, and the Rest Period Premium Wages Class were employees of Defendants, covered by Labor Code section 226.7 and Wage Order 4.

99. California law requires that “[e]very 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...” Wage Order 4, §12. Employees are entitled to 10 minutes rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code §226.7. Additionally, the rest period requirement “obligates employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time. *Id.* 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 work day that the rest period is not provided.” Wage Order 4, §12; Labor Code §226.7.

100. In this case, Plaintiffs GALLEGOS and SANCHEZ and the Rest Period Class regularly worked shifts of more than three-and-a-half (3.5) hours. Nevertheless, Defendants employed policies, practices, and/or procedures that resulted in their failure to authorize or permit all legally required and compliant rest periods to Plaintiffs GALLEGOS and SANCHEZ and the

1 Rest Period Class. Such policies, practices, and/or procedures included, but were not limited to:

2 d. Failing to provide Plaintiffs GALLEGOS and SANCHEZ and the Rest Period
3 Class duty-free rest breaks;

4 e. Defendants routinely required Plaintiffs GALLEGOS and SANCHEZ and
5 similarly situated employees to work three and one-half (3 1/2) or more hours without authorizing
6 or permitting a compliant ten (10) minute rest period per each four (4) hour period, or major fraction
7 thereof, worked;

8 f. Defendants willfully required, suffered, and permitted Plaintiffs
9 GALLEGOS and SANCHEZ and similarly situated employees to work during what should have
10 been their rest periods. Defendants also failed to relieve Plaintiffs GALLEGOS and SANCHEZ and
11 similarly situated employees of all duties for ten (10) minutes as required for compliant rest breaks;
12 and

13 g. Failing to provide Plaintiffs GALLEGOS and SANCHEZ and the Rest Period
14 Class duty-free rest breaks by requiring them to remain on Defendants' premises during their rest
15 breaks.

16 101. Additionally, Defendants failed to pay Plaintiffs GALLEGOS and SANCHEZ and
17 the Rest Period Class one (1) hour of pay at their regular rate of pay for each workday they did not
18 receive all legally required and legally compliant rest periods. Defendants lacked a policy and
19 procedure for compensating Plaintiffs GALLEGOS and SANCHEZ and the Rest Period Class with
20 premium wages when they did not receive all legally required and legally compliant rest periods.

21 102. Further, on occasions when Defendants did pay Plaintiffs GALLEGOS and
22 SANCHEZ and the Rest Period Premium Wages Class a "premium" wage for late, missed, short,
23 on-premise, on-duty, and/or interrupted rest periods, Defendants failed to pay the one (1) additional
24 hour of pay at Plaintiffs GALLEGOS and SANCHEZ's and the Rest Period Premium Wages Class'
25 regular rate of compensation. Specifically, Defendants maintained a policy, practice, and/or
26 procedure of failing to include all remuneration such as service charges, for example, when
27 calculating Plaintiffs GALLEGOS and SANCHEZ's and the Rest Period Premium Wages Class'
28 regular rate of pay for the purpose of paying rest period premiums.

103. Defendants' unlawful conduct alleged herein occurred in the course of employment of Plaintiffs GALLEGOS and SANCHEZ, the Rest Period Class, and the Rest Period Premium Wages Class and such conduct has continued through the filing of this Complaint.

104. Because Defendants failed to provide employees with rest periods in compliance with the law, Defendants are liable to Plaintiffs GALLEGOS and SANCHEZ, the Rest Period Class, and the Rest Period Premium Wages Class for one (1) hour of additional pay at the regular rate of compensation for each workday that Defendants did not provide all legally required and legally compliant rest periods, pursuant to Labor Code section 226.7 and the Wage Order.

105. Plaintiffs GALLEGOS and SANCHEZ, on behalf of themselves, the Rest Period Class, and the Rest Period Premium Wages Class seek damages and all other relief allowable, including a rest period premium wage for each workday Defendants failed to provide all legally required and legally compliant rest periods, plus pre-judgment interest.

FIFTH CAUSE OF ACTION

FAILURE TO INDEMNIFY EMPLOYEES FOR EMPLOYMENT-RELATED LOSSES/EXPENDITURES IN VIOLATION OF LABOR CODE SECTION 2802

(Against All Defendants by Plaintiffs GALLEGOS and SANCHEZ

and the Indemnification Class)

106. Plaintiffs incorporate all paragraphs above as though fully set forth herein.

107. Plaintiffs GALLEGOS and SANCHEZ and members of the Indemnification Class have been employed by Defendants in the State of California. Labor Code section 2802(a) states that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer..." An employer is prohibited from passing the ordinary business expenses and losses of the employer onto the employee. (Labor Code section 2802).

108. Defendants violated Labor Code section 2802 by employing policies, practices, and/or procedures of impermissibly passing business-related expenses to Plaintiff SANCHEZ and Indemnification Class Members. These policies, practices, and/or procedures included, but were not limited to, requiring Plaintiffs GALLEGOS and SANCHEZ and Indemnification Class Members to

1 use or purchase their own tools and/or resources in order to work for Defendants, including but not
2 limited to mileage, vehicle use, personal protective equipment like masks and thermometers during
3 the COVID-19 pandemic, and personal cell phone (including both telephone use and cellular data
4 use) for work-related purposes - without reimbursing Plaintiffs GALLEGOS and SANCHEZ and
5 Indemnification Class Members for such use.

6 109. The costs incurred by Plaintiffs GALLEGOS and SANCHEZ and Indemnification
7 Class Members to use or purchase their own tools and/or resources for their mandatory compliance
8 with Defendants' aforementioned policies, practices, and/or procedures were significant as a result
9 of their employment with Defendants.

10 110. Moreover, Defendants employed policies and procedures which ensured that
11 Plaintiffs GALLEGOS and SANCHEZ and Indemnification Class Members would not receive
12 indemnification for all necessary expenditures or losses incurred by them in direct consequence of
13 discharging their duties. Defendants' aforementioned policies, practices, and/or procedures resulted
14 in Plaintiffs GALLEGOS and SANCHEZ and Indemnification Class Members not receiving
15 indemnification for employment-related expenditures in compliance with California law.

16 111. Because Defendants failed to indemnify employees for the necessary expenditures
17 incurred in the discharge of their duties, they are liable to Plaintiffs GALLEGOS and SANCHEZ
18 and Indemnification Class Members for monies to compensate them for such expenditures or losses
19 pursuant to Labor Code section 2802.

20 112. As a direct and proximate result of Defendants' violation of Labor Code section
21 2802, Plaintiffs GALLEGOS and SANCHEZ and Indemnification Class Members have suffered
22 irreparable harm and monetary damages entitling them to both injunctive relief and restitution.
23 Plaintiffs GALLEGOS and SANCHEZ, on behalf of themselves and on behalf of the
24 Indemnification Class, seek damages and all other relief allowable including indemnification for all
25 employment-related expenses as well as ordinary business expenses incurred by Defendants and
26 passed on to Plaintiffs GALLEGOS and SANCHEZ and Indemnification Class Members, pursuant
27 to Labor Code section 2802.

28 ///

113. Pursuant to Labor Code Section 2802, Plaintiffs GALLEGOS and SANCHEZ and Indemnification Class Members are entitled to recover full indemnification, reasonable attorneys' fees and costs of suit.

SIXTH CAUSE OF ACTION

**FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN
VIOLATION OF LABOR CODE SECTION 226(a)**

**(Against All Defendants by Plaintiffs GALLEGOS and SANCHEZ
and the Wage Statement Class)**

114. Plaintiffs incorporate all paragraphs above as though fully set forth herein.

115. At all times relevant to this Complaint, Plaintiffs GALLEGOS and SANCHEZ and the Wage Statement Class were hourly, non-exempt employees of Defendants, covered by Labor Code section 226.

116. Pursuant to Labor Code section 226, subdivision (a), Plaintiffs GALLEGOS and SANCHEZ and the Wage Statement Class were entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage statement accurately stating the following:

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

117. As a derivative of Defendants' claims above, Plaintiffs GALLEGOS and SANCHEZ allege that Defendants failed to provide accurate wage and hour statements to them and the Wage Statement Class who were subject to Defendants' control for uncompensated time and who did not receive all their earned wages (including meal period premium wages and rest period premium wages), in violation of Labor Code section 226(a).

1 118. Defendants provided Plaintiffs GALLEGOS and SANCHEZ and the Wage
2 Statement Class with itemized statements which stated inaccurate information including, but not
3 limited to, the number of hours worked, the gross wages earned, and the net wages earned.

4 119. Defendants' failure to provide Plaintiffs GALLEGOS and SANCHEZ and the Wage
5 Statement Class with accurate wage statements was knowing and intentional. Defendants had the
6 ability to provide Plaintiffs GALLEGOS and SANCHEZ and the Wage Statement Class with
7 accurate wage statements but intentionally provided wage statements they knew were not accurate.
8 Defendants knowingly and intentionally put in place practices which deprived employees of wages
9 and resulted in Defendants knowingly and intentionally providing inaccurate wage statements.
10 These practices included Defendants' failure to include all hours worked and all wages due.

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

21 121. Pursuant to Labor Code section 226(e), Plaintiffs GALLEGOS and SANCHEZ and
22 the Wage Statement Class are entitled to recover fifty (50) dollars per employee for the initial pay
23 period in which a section 226 violation occurred and one hundred dollars per employee per violation
24 for each subsequent pay period, not to exceed an aggregate penalty of four thousand (4,000) dollars
25 per employee.

26 122. Pursuant to Labor Code section 226(h), Plaintiffs GALLEGOS and SANCHEZ and
27 the Wage Statement Class are entitled to bring an action for injunctive relief to ensure Defendants'
28 compliance with Labor Code section 226(a). Injunctive relief is warranted because Defendants

1 continue to provide currently employed Wage Statement Class Members with inaccurate wage
2 statements in violation of Labor Code section 226(a) and currently employed Wage Statement Class
3 Members have no adequate legal remedy for the continuing injuries that will be suffered as a result
4 of Defendants' ongoing unlawful conduct. Injunctive relief is the only remedy available for ensuring
5 Defendants' compliance with Labor Code section 226(a).

6 123. Pursuant to Labor Code sections 226(e) and 226(h), Plaintiffs GALLEGOS and
7 SANCHEZ and the Wage Statement Class are entitled to recover the full amount of penalties due
8 under Section 226(e), reasonable attorneys' fees, and costs of suit.

9 **SEVENTH CAUSE OF ACTION**

10 **FAILURE TO TIMELY PAY EARNED WAGES DURING EMPLOYMENT IN**

11 **VIOLATION OF LABOR CODE SECTIONS 204 AND 210**

12 **(Against All Defendants by Plaintiffs GALLEGOS and SANCHEZ**

13 **and the Pay Day Class)**

14 124. Plaintiffs incorporate all paragraphs above as though fully set forth herein.

15 125. Plaintiffs GALLEGOS and SANCHEZ and the Pay Day Class have been employed
16 by Defendants in the State of California. In California, wages must be paid at least twice during
17 each calendar month on days designated in advance by the employer as regular paydays, subject to
18 some exceptions. Labor Code § 204(a). Wages earned between the 1st and 15th days, inclusive, of
19 any calendar month must be paid between the 16th and the 26th day of that month and wages earned
20 between the 16th and the last day, inclusive, of any calendar month must be paid between the 1st
21 and 10th day of the following month. *Id.* Other payroll periods such as those that are weekly,
22 biweekly, or semimonthly, must be paid within seven (7) calendar days following the close of the
23 payroll period in which wages were earned. Labor Code § 204(d).

24 126. As a derivative of Plaintiffs' GALLEGOS and SANCHEZ's claims above, Plaintiffs
25 GALLEGOS and SANCHEZ allege that Defendants failed to timely pay Plaintiffs GALLEGOS
26 and SANCHEZ's and the Pay Day Class' earned wages (including meal period premium wages and
27 rest period premium wages) in violation of Labor Code section 204.

28 ///

127. Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay Plaintiffs GALLEGOS and SANCHEZ and the Pay Day Class their earned wages within the applicable time frames outlined in Labor Code section 204.

128. Defendants' failure to timely pay Plaintiffs GALLEGOS and SANCHEZ and the Pay Day Class their earned wages in accordance with Labor Code section 204 was willful. Defendants had the ability to timely pay all wages earned by hourly workers in accordance with Labor Code section 204, but intentionally adopted policies or practices incompatible with the requirements of Labor Code section 204. When Defendants failed to timely pay Plaintiffs GALLEGOS and SANCHEZ and the Pay Day Class all earned wages, they knew what they were doing and intended to do what they did.

129. As a result of Defendants' unlawful conduct, Plaintiffs GALLEGOS and SANCHEZ and the Pay Day Class have suffered damages in an amount subject to proof, to the extent that they were not timely paid their earned wages pursuant to Labor Code section 204.

130. Pursuant to Labor Code section 210, Plaintiffs GALLEGOS and SANCHEZ and the Pay Day Class are entitled to recover statutory penalties as follows: (1) for any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and (2) for each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus twenty-five (25%) percent of the amount unlawfully withheld.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES TIMELY UPON SEPARATION OF EMPLOYMENT

IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203

(Against All Defendants by Plaintiffs GALLEGOS and SANCHEZ

and the Waiting Time Class)

131. Plaintiffs incorporate all paragraphs above as though fully set forth herein.

132. At all times relevant to this Complaint, Plaintiffs GALLEGOS and SANCHEZ and the Waiting Time Class were employees of Defendants, covered by Labor Code sections 201 and 202.

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1 133. An employer is required to pay all unpaid wages timely after an employee's
2 employment ends. The wages are due immediately upon termination or within seventy-two (72)
3 hours of resignation. Labor Code sections 201 and 202. If an employee gave seventy-two (72) hours
4 previous notice, they were entitled to payment of all wages earned and unpaid at the time of
5 resignation. *Id.*

6 134. Defendants failed to pay Plaintiffs GALLEGOS and SANCHEZ and on information
7 and belief, the Waiting Time Class, with all wages earned and unpaid prior to separation of
8 employment, in accordance with either Labor Code section 201 or 202. Plaintiffs GALLEGOS and
9 SANCHEZ are informed and believe and thereon allege that at all relevant times within the
10 limitations period applicable to this cause of action, Defendants maintained a policy or practice of
11 not paying hourly employees all earned wages timely upon separation of employment.

12 135. Defendants' failure to pay Plaintiffs GALLEGOS and SANCHEZ and the Waiting
13 Time Class with all wages earned prior to separation of employment timely in accordance with
14 Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned
15 by hourly workers prior to separation of employment in accordance with Labor Code sections 201
16 and 202, but intentionally adopted policies or practices incompatible with the requirements of Labor
17 Code sections 201 and 202. Defendants' practices include failing to pay at least minimum wage for
18 all time worked, overtime wages for all overtime hours worked, meal period premium wages, and/or
19 rest period premium wages. When Defendants failed to pay Plaintiffs GALLEGOS and SANCHEZ
20 and the Waiting Time Class all earned wages timely upon separation of employment, they knew
21 what they were doing and intended to do what they did.

22 136. Pursuant to either Labor Code section 201 or 202, Plaintiffs GALLEGOS and
23 SANCHEZ and the Waiting Time Class are entitled to all wages earned prior to separation of
24 employment that Defendants have yet to pay them.

25 137. Pursuant to Labor Code section 203, Plaintiffs GALLEGOS and SANCHEZ and the
26 Waiting Time Class are entitled to continuation of their wages, from the day their earned and unpaid
27 wages were due until paid, up to a maximum of thirty (30) days.

28 ///

138. As a result of Defendants' conduct, Plaintiffs GALLEGOS and SANCHEZ and the Waiting Time Class have suffered damages in an amount, subject to proof, to the extent they were not paid for all wages earned prior to separation of employment.

139. As a result of Defendants' conduct, Plaintiffs GALLEGOS and SANCHEZ and the Waiting Time Class have suffered damages in an amount, subject to proof, to the extent they were not paid all continuation wages owed under Labor Code section 203.

140. Plaintiffs GALLEGOS and SANCHEZ and the Waiting Time Class are entitled to recover the full amount of their unpaid wages, continuation wages under Labor Code section 203, and interest thereon.

NINTH CAUSE OF ACTION

**UNFAIR BUSINESS PRACTICES IN VIOLATION OF BUSINESS AND PROFESSIONS
CODE SECTION 17200, ET SEQ.**

**(Against All Defendants by Plaintiffs GALLEGOS and SANCHEZ
and the California Class)**

141. Plaintiffs incorporate all paragraphs above as though fully set forth herein.

142. The unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business and Professions Code section 17200. This unfair conduct includes Defendants' use of policies, practices, and/or procedures which resulted in: failure to pay employees at least at the minimum wage rate for all hours which they worked; failure to pay overtime wages for all overtime hours worked; failure to authorize or permit all legally required and compliant meal periods or pay meal period premium wages; failure to authorize or permit all legally required and compliant rest periods or pay rest period premium wages; failure to indemnify all necessary expenditures or losses incurred in direct consequence of discharging duties; failure to provide complete and accurate wage and hour statements; failure to timely pay earned wages during employment; and failure to timely pay all wages due upon separation of employment. Due to their unfair and unlawful business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to pay minimum wages for all hours worked; pay overtime wages

1 for all overtime hours worked; authorize or permit all legally required and compliant meal periods
2 or pay meal period premium wages; authorize or permit all legally required and compliant rest
3 periods or pay rest period premium wages; indemnify all necessary expenditures or losses incurred
4 in direct consequences of discharging duties; provide complete and accurate wage and hour
5 statements; timely pay earned wages during employment; and timely pay all wages due upon
6 separation of employment.

7 143. As a result of Defendants' unfair competition as alleged herein, Plaintiffs
8 GALLEGOS and SANCHEZ and the California Class have suffered injury in fact and lost money
9 or property, as described in more detail above.

10 144. Pursuant to Business and Professions Code section 17203, Plaintiffs GALLEGOS
11 and SANCHEZ and the California Class are entitled to restitution of all wages and other monies
12 rightfully belonging to them that Defendants failed to pay and wrongfully retained by means of their
13 unlawful and unfair business practices. Plaintiffs GALLEGOS and SANCHEZ also seek an
14 injunction against Defendants on behalf of the California Class enjoining Defendants, and any and
15 all persons acting in concert with them, from engaging in each of the unlawful policies, practices,
16 and/or procedures set forth herein.

17 **TENTH CAUSE OF ACTION**

18 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
19 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

20 **(Against all Defendants by Plaintiffs GALLEGOS and GARCIA)**

21 145. Plaintiffs incorporate all paragraphs above as though fully set forth herein.

22 146. Plaintiffs GALLEGOS and GARCIA bring this action on an individual basis and on
23 a representative basis on behalf of other aggrieved employees and the State of California, in
24 capacities as private attorney generals pursuant to the Private Attorneys General Act of 2004,
25 California Labor Code § 2698, *et seq.*

26 147. PAGA expressly provides for a private right of action to recover civil penalties for
27 violations of the Labor Code as follows: "Notwithstanding any other provision of law, any provision
28 of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce

1 Development Agency or any of its departments, divisions, commissions, boards, agencies, or
2 employees, for a violation of this code, may, as an alternative, be recovered through a civil action
3 brought by an aggrieved employee on behalf of himself or herself and other current or former
4 employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code § 2699(a).

5 148. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
6 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized
7 to exercise the same discretion, subject to the same limitations and conditions, to assess a civil
8 penalty.

9 149. Plaintiffs GALLEGOS and GARCIA and the other hourly-paid, non-exempt
10 employees are “Aggrieved Employees” as defined by California Labor Code section 2699(c) in that
11 they are all current or former employees of Defendants, and one or more of the alleged violations
12 were committed against them.

13 150. Defendants’ conduct, as alleged herein, violates numerous sections of the California
14 Labor Code, including, but not limited to, the following:

- 15 (a) Violation of California Labor Code sections 510 and 1198 for failure to pay
16 overtime wages, as set forth more fully below;
- 17 (b) Violation of California Labor Code sections 1194, 1197, and 1197.1 for failure to
18 pay minimum wages, as set forth more fully below;
- 19 (c) Violation of California Labor Code sections 226.7 and 512(a) for failure to provide
20 legally required meal periods, as set forth more fully below;
- 21 (d) Violation of California Labor Code sections 226.7 and 512(a) for failure to pay
22 required meal period premiums, as set forth more fully below;
- 23 (e) Violation of California Labor Code section 226.7 for failure to provide legally
24 required rest periods, as set forth more fully below;
- 25 (f) Violation of California Labor Code section 226.7 for failure to pay required rest
26 period premiums, as set forth more fully below;
- 27 (g) Violation of California Labor Code section 204 for failure to timely pay wages to
28 Plaintiffs GALLEGOS and GARCIA and aggrieved employees during employment,

as set forth more fully before;

(h) Violation of California Labor Code sections 201, 202, and 203 for failure to pay all wages at time of discharge from employment, as set forth more fully below;

(i) Violation of California Labor Code section 226(a) for failure to provide accurate wage statements to Plaintiffs GALLEGOS and GARCIA and aggrieved employees, as set forth more fully below;

(j) Violation of California Labor Code section 1174(d) for failure to keep complete and accurate payroll records relating to Plaintiffs GALLEGOS and GARCIA and aggrieved Employees, as set forth more fully below; and

(k) Violation of California Labor Code sections 2800 and 2802 for failure to reimburse Plaintiffs GALLEGOS and GARCIA and Aggrieved Employees for necessary business-related expenses, as set forth more fully below.

151. Pursuant to PAGA, and in particular Labor Code sections 2699(a), 2699.3, and 2699.5, Plaintiffs GALLEGOS and GARCIA, acting in the public interest as private attorney generals, seek assessment and collection of civil penalties for Plaintiffs GALLEGOS and GARCIA, all Aggrieved Employees, and the State of California against Defendants for violations of Labor Code sections set forth herein, including penalties under California Labor Code sections 2699, 558, 210, 1197.1, 226, 226.3, 1174.5, and 1197.1, penalties under the applicable IWC Wage Order, and any and all additional penalties and remedies as provided by the California Labor Code and/or other statutes.

152. Pursuant to California Labor Code section 2699(i), civil penalties recovered by Aggrieved Employees shall be distributed as follows: seventy-five percent (75%) to the LWDA for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five (25%) to the Aggrieved Employees.

153. Plaintiffs GALLEGOS and GARCIA retained counsel to file this court action, and to assess and collect the civil penalties owed by Defendants. Plaintiffs GALLEGOS and GARCIA therefore seek an award of reasonable attorney's fees and costs pursuant to Labor Code §§ 210, 218.5, and 2699(g)(1), and any other applicable statute.

Failure to Pay Minimum Wages

154. California Labor Code sections 1194, 1197 and 1197.1 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.

155. The IWC set the minimum wage for Plaintiffs GALLEGOS and GARCIA and the Aggrieved Employees in the applicable IWC Wage Order.

156. Defendants failed to pay minimum wage to Plaintiffs GALLEGOS and GARCIA and the Aggrieved Employees for a wide range of off-the-clock work performed, including, *inter alia*, providing customer service after clocking out.

157. Moreover, Defendants had a policy, practice and procedure of rounding employee time such that Plaintiffs GALLEGOS and GARCIA and Aggrieved Employees were systematically unpaid and/or underpaid for time worked over the course of their employment.

158. Plaintiffs GALLEGOS and GARCIA and Aggrieved Employees were required to work off-the-clock including, but not limited to, shutting down computer systems, activate the alarm systems, responding to Defendants, co-workers, and supervisors on work-related requests during purported meal breaks and after shifts ended, cleaning and take out the trash at the end of shifts, selling money orders, and locking Defendants' stores after clocking out for the end of their shifts.

151. Plaintiffs GALLEGOS and GARCIA and Aggrieved Employees were required to work off-the-clock including, but not limited to, unlocking Defendants' stores, deactivate the alarm systems, and booting up computer systems prior to being able to clock in for their start of their shifts.

152. Defendants had a policy, practice, and procedure of rounding employee time such that Plaintiffs GALLEGOS and GARCIA and similarly situated employees were systematically unpaid and/or underpaid for time worked over the course of their employment; and

153. Failing to provide Plaintiffs GALLEGOS and GARCIA and Aggrieved Employees who work single-employee shifts, duty-free meal breaks by requiring them to remain on-duty during their off-the-clock meal breaks without being paid for that time.

1 154. Accordingly, Defendants regularly failed to pay at least minimum wages to
2 Plaintiffs GALLEGOS and GARCIA and the Aggrieved Employees for all hours they worked in
3 violation of California Labor Code sections 1194, 1197, and 1197.1.

4 **Failure to Pay Proper Overtime Wages**

5 155. Labor Code section 510 and the applicable IWC Wage Order require Defendants to
6 pay Plaintiffs GALLEGOS and GARCIA and Aggrieved Employees who worked more than eight
7 (8) hours in a day; more than forty (40) hours in a workweek, and/or seven (7) consecutive days, at
8 the rate of one-and-a-half times their regular rate for all such hours worked.

9 156. Labor Code section 510 and the applicable IWC Wage Order further requires
10 Defendants to pay Plaintiffs GALLEGOS and GARCIA and Aggrieved Employees who worked
11 more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day,
12 overtime compensation at a rate of two (2) times their regular rate of pay for all such hours worked.

13 157. During the relevant time period, Plaintiffs GALLEGOS and GARCIA and
14 Aggrieved Employees regularly worked in excess of eight (8) hours in a day, in excess of twelve
15 (12) hours in a day, in excess of forty (40) hours in a workweek and/or for seven (7) or more
16 consecutive days, but Defendants routinely failed to properly account for all such overtime hours
17 and further failed to compensate Plaintiffs GALLEGOS and GARCIA and Aggrieved Employees
18 at the correct overtime rates.

19 158. Defendants' failure to pay correct overtime wages included, *inter alia*: (a) when the
20 combined total of the off-the-clock work discussed *supra* and the on-the-clock work exceed the
21 number of hours that trigger the payment of overtime wages under Labor Code sections 510 and/or
22 the applicable Wage Order; (b) when Defendants intentionally, willfully and/or negligently
23 mischaracterized overtime as straight time, or double time as time-and-a-half; (c) when Defendants
24 assigned more work than could reasonably be completed in a workday or workweek to Plaintiffs
25 GALLEGOS and GARCIA and Aggrieved Employees, but refused to authorize the overtime
26 necessary for them to complete the assigned work; and (d) when Defendants failed to include all
27 required wages and remuneration when calculating the overtime rate.

28 ///

159. Defendants' failure to pay Plaintiffs GALLEGOS and GARCIA and Aggrieved Employees proper overtime compensation, as required by California law, violates the provisions of California Labor Code section 510, and is therefore unlawful.

160. Defendants failed to pay overtime wages to Plaintiffs GALLEGOS and GARCIA and the Aggrieved Employees for a wide range of off-the-clock work performed, including, *inter alia*, providing customer service after clocking out.

161. Moreover, Defendants had a policy, practice, and procedure of rounding employee time such that Plaintiffs GALLEGOS and GARCIA and Aggrieved Employees were systematically unpaid and/or underpaid for time worked over the course of their employment.

162. Plaintiffs GALLEGOS and GARCIA and Aggrieved Employees were required to work off-the-clock including, but not limited to, shutting down computer systems, activate the alarm systems, responding to Defendants, co-workers, and supervisors on work-related requests during purported meal breaks and after shifts ended, cleaning and take out the trash at the end of shifts, selling money orders, and locking Defendants' stores after clocking out for the end of their shifts.

163. Plaintiffs GALLEGOS and GARCIA and Aggrieved Employees were required to work off-the-clock including, but not limited to, unlocking Defendants' stores, deactivate the alarm systems, and booting up computer systems prior to being able to clock in for their start of their shifts.

164. Defendants had a policy, practice, and procedure of rounding employee time such that Plaintiffs GALLEGOS and GARCIA and similarly situated employees were systematically unpaid and/or underpaid for time worked over the course of their employment; and

165. Failing to provide Plaintiffs GALLEGOS and GARCIA and Aggrieved Employees who work single-employee shifts, duty-free meal breaks by requiring them to remain on-duty during their off-the-clock meal breaks without being paid for that time.

Failure to Provide Meal Periods

166. California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal period mandated by an applicable IWC Order.

1 167. California Labor Code section 512(a) provides that an employer may not require,
2 cause, or permit an employee to work for a period of more than five (5) hours per day without
3 providing the employee with a meal period of not less than thirty (30) minutes, except that if the
4 total work period per day of the employee is not more than six (6) hours, the meal period may be
5 waived by mutual consent of both the employer and the employee.

6 168. California Labor Code section 512(a) further provides that an employer may not
7 employ an employee for a work period of more than 10 hours per day without providing the
8 employee with a second meal period of not less than 30 minutes, except that if the total hours
9 worked is no more than 12 hours, the second meal period may be waived by mutual consent of the
10 employer and the employee only if the first meal period was not waived.

11 169. The applicable IWC Wage Order sets forth the same requirements for meal breaks.

12 170. Plaintiffs GALLEGOS and GARCIA and Aggrieved Employees who were
13 scheduled to work for no longer than six (6) hours, and who did not waive their legally mandated
14 meal periods by mutual consent, were required to work for periods longer than five (5) hours
15 without a meal period of not less than thirty (30) minutes.

16 171. Plaintiffs GALLEGOS and GARCIA and the Aggrieved Employees
17 who were scheduled to work for more than six (6) hours were required to work for periods longer
18 than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

19 172. Plaintiffs GALLEGOS and GARCIA and the Aggrieved Employees,
20 who were scheduled to work for more than ten (10) hours but no longer than twelve (12) hours, and
21 who did not waive their legally-mandated meal periods by mutual consent, were required to work
22 in excess of ten (10) hours without receiving a second uninterrupted meal period of not less than
23 thirty (30) minutes.

24 173. Plaintiffs GALLEGOS and GARCIA and the Aggrieved Employees,
25 who were scheduled to work for a period of time in excess of twelve (12) hours, were required to
26 work for periods longer than ten (10) hours without a second uninterrupted meal period of not less
27 than thirty (30) minutes.

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1 174. Moreover, when meal breaks were provided, they were often interrupted, cut-short,
2 and/or late, Plaintiffs GALLEGOS and GARCIA and the Aggrieved Employees were not relieved
3 of all duties as required by law.

4 175. Defendants failed to provide Plaintiffs GALLEGOS and GARCIA and the
5 Aggrieved Employees who work at single-employee locations duty-free meal breaks.

6 176. Defendants required Plaintiffs GALLEGOS and GARCIA and Aggrieved
7 Employees to work through their lunch breaks, permitting and/or requiring Plaintiffs GALLEGOS
8 and GARCIA and Aggrieved Employees to take late lunch breaks, permitting and/or requiring
9 Plaintiffs GALLEGOS and GARCIA and Aggrieved Employees to take short lunch breaks,
10 interrupting and/or allowing others to interrupt Plaintiffs GALLEGOS and GARCIA and
11 Aggrieved Employees during their lunch breaks, failing to relieve Plaintiffs GALLEGOS and
12 GARCIA and Aggrieved Employees of all duties during their lunch breaks, and restricting Plaintiffs
13 GALLEGOS and GARCIA and Aggrieved Employees from leaving the premises during their lunch
14 breaks.

15 177. Because of Defendants' rounding policy, meal breaks were at times incorrectly
16 recorded as compliant, when in reality they were untimely and/or cut short.

17 178. Such conduct violates California Labor Code sections 226.7 and 512(a) and the
18 applicable IWC Wage Order.

19 **Failure to Pay Compliant Meal Break Premiums**

20 179. California Labor Code section 226.7 provides: “[i]f an employer fails to provide an
21 employee a [meal] period in accordance with a state law, including, but not limited to, an applicable
22 statute or applicable regulation, standard, or order of the Industrial Welfare Commission... the
23 employer shall pay the employee one additional hour of pay at the employee's regular rate of
24 compensation for each workday that the [meal] period is not provided.

25 180. The applicable IWC Wage Order provides: “[i]f an employer fails to provide an
26 employee a meal period in accordance with the applicable provisions of this Order, the employer
27 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
28 work day that the meal period is not provided.”

1 181. Defendants failed to pay Plaintiffs GALLEGOS and GARCIA and Aggrieved
2 Employees meal period premiums due in violation of California Labor Code sections 226.7 and
3 512 on each day when a complete, timely, and uninterrupted meal period of at least thirty (30)
4 minutes was not provided.

5 182. Moreover, if and when meal break premiums were provided, Defendants failed to
6 incorporate all nondiscretionary payments for work performed by Plaintiffs GALLEGOS and
7 GARCIA and the Aggrieved Employees in the regular rate of compensation for purposes of such
8 premiums.

9 183. Defendants' conduct violates the applicable IWC Wage Orders and California Labor
10 Code section 226.7.

11 **Failure to Provide Rest Periods**

12 184. California Labor Code section 226.7 provides that no employer shall require an
13 employee to work during any rest period mandated by an applicable order of the California IWC.

14 185. The applicable IWC Wage Order provides that "[e]very employer shall authorize
15 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of
16 each work period" and that the "rest period time shall be based on the total hours worked daily at
17 the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the
18 total daily work time is less than three and one-half (3½) hours.

19 186. Defendants required Plaintiffs GALLEGOS and GARCIA and the Aggrieved
20 Employees to work four (4) or more hours without authorizing or permitting a timely ten (10)
21 minute uninterrupted rest period during which time they were relieved of their duties per each four
22 (4) hour period, or major fraction thereof worked.

23 187. Defendants failed to provide Plaintiffs GALLEGOS and GARCIA and Aggrieved
24 Employees who work at single-employee shifts duty-free rest breaks.

25 188. Defendants routinely required Plaintiffs GALLEGOS and GARCIA and Aggrieved
26 Employees to work three and one-half (3 1/2) or more hours without authorizing or permitting a
27 compliant ten (10) minute rest period per each four (4) hour period, or major fraction thereof,
28 worked.

1 189. Defendants willfully required, suffered and permitted Plaintiffs GALLEGOS and
2 GARCIA and Aggrieved Employees to work during what should have been their rest periods.
3 Defendants also failed to relieve Plaintiffs GALLEGOS and GARCIA and Aggrieved Employees
4 of all duties for ten (10) minutes as required for compliant rest breaks.

5 190. Defendants failed to provide Plaintiffs GALLEGOS and GARCIA and Aggrieved
6 Employees duty-free rest breaks by requiring them to remain on Defendants' premises during their
7 rest breaks.

8 191. Defendants' conduct therefore violates the applicable IWC Wage Orders and
9 California Labor Code section 226.7.

10 **Failure to Pay Rest Break Premiums**

11 192. California Labor Code section 226.7 provides: "[i]f an employer fails to provide an
12 employee a meal or rest or recovery period in accordance with a state law, including, but not limited
13 to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
14 Commission,... the employer shall pay the employee one additional hour of pay at the employee's
15 regular rate of compensation for each workday that the [rest] period is not provided.

16 193. The applicable IWC Wage Order provides: "[i]f an employer fails to provide an
17 employee a rest period in accordance with the applicable provisions of this Order, the employer
18 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
19 work day that the rest period is not provided.

20 194. Defendants failed to pay Plaintiffs GALLEGOS and GARCIA and Aggrieved
21 Employees required rest break premiums due when compliant rest periods were not provided.

22 195. Such conduct is in direct violation of California Labor Code section 226.7.

23 **Failure to Timely Pay Wages During Employment**

24 196. California Labor Code section 204 provides that all wages earned by any person in
25 any employment between the 1st and 15th days, inclusive, of any calendar month, other than those
26 wages due upon termination of an employee, are due and payable between the 16th and the 26th
27 day of the month during which the labor was performed. It further provides all wages earned by
28 any person in any employment between the 16th and the last day, inclusive, of any calendar month,

1 other than those wages due upon termination of an employee, are due and payable between the 1st
2 and the 10th day of the following month.

3 197. California Labor Code section 204 provides that all wages earned for labor in excess
4 of the normal work period shall be paid no later than the payday for the next regular payroll period.

5 198. During the relevant time period, Defendants intentionally and willfully failed to pay
6 Plaintiffs GALLEGOS and GARCIA and the Aggrieved Employees all wages due to them, within
7 any time period permissible under California Labor Code section 204, including wages for overtime
8 compensation, minimum wage compensation, meal period premiums, and rest period premiums.

9 199. Such conduct violates Labor Code section 204.

10 **Failure to Timely Pay Wages Upon Termination**

11 200. Pursuant to California Labor Code sections 201, 202, and 203, Defendants are
12 required to timely pay all earned and unpaid wages to an employee who is discharged.

13 201. California Labor Code section 201 mandates that if an employer discharges an
14 employee, the employee's wages accrued and unpaid at the time of discharge are due and payable
15 immediately.

16 202. California Labor Code section 202 mandates that if an employee quits, his or her
17 wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the
18 employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case
19 the employee is entitled to his or her wages at the time of quitting.

20 203. California Labor Code section 203 provides that if an employer willfully fails to
21 pay, in accordance with California Labor Code sections 201 and 202, any wages of an employee
22 who is discharged or who quits, the wages of the employee shall continue as a penalty from the due
23 date thereof at the same rate until paid or until an action therefore is commenced; but the wages
24 shall not continue for more than thirty (30) days.

25 204. At the time that Plaintiffs GALLEGOS and GARCIA and Aggrieved Employees'
26 employment with Defendants ended, Defendants knowingly and willfully failed to pay Plaintiffs
27 GALLEGOS and GARCIA and the Aggrieved Employees all wages owed to them pursuant to
28 California Labor Code sections 201 and 202, including, without limitation, overtime wages,

1 minimum wages, and meal and rest period premium wages.

2 205. Such conduct violates Labor Code sections 201, 202 and 203.

3 **Failure to Provide Compliant Wage Statements**

4 206. California Labor Code section 226(a) provides that every employer shall furnish
5 each of its employees an accurate itemized statement in writing showing (1) gross wages earned,
6 (2) total hours worked by the employee, (3) the number of piece-rate units earned and any
7 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that
8 all deductions made on written orders of the employee may be aggregated and shown as one item,
9 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
10 name of the employee and his or her social security number, (8) the name and address of the legal
11 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
12 the corresponding number of hours worked at each hourly rate by the employee.

13 207. Defendants intentionally and willfully failed to provide employees with complete
14 and accurate wage statements. The deficiencies include, among other things, the failure to state all
15 correct rates of pay, all hours worked, all meal period premium wages earned, and all rest period
16 premium wages earned.

17 208. Such conduct violates Labor Code section 226.

18 **Failure to Keep Requisite Payroll Records**

19 209. California Labor Code section 1174(d) requires an employer to keep, at a central
20 location in the state or at the plants or establishments at which employees are employed, payroll
21 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
22 units earned by and any applicable piece rate paid to, employees employed at the respective plants
23 or establishments. These records shall be kept in accordance with rules established for this purpose
24 by the commission, but in any case shall be kept on file for not less than three years.

25 210. Defendants intentionally and willfully failed to keep accurate and complete payroll
26 records showing the hours worked daily and the wages paid to Plaintiff and the Aggrieved
27 Employees.

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211. As a result of Defendants' violation of California Labor Code section 1174(d), Plaintiffs GALLEGOS and GARCIA and the Aggrieved Employees have suffered injury and damage to their statutorily protected rights.

212. More specifically, Plaintiffs GALLEGOS and GARCIA and the Aggrieved Employees have been injured by Defendants' intentional and willful violation of California Labor Code section 1174(d) because they were denied both their legal right and protected interest, in having available, accurate and complete payroll records pursuant to California Labor Code section 1174(d).

Failure to Reimburse Necessary Business Expenses

213. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

214. Plaintiffs GALLEGOS and GARCIA and the Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including, but not limited to, mileage, vehicle use, the purchase of personal protective equipment like masks and thermometers during the COVID-19 pandemic, and the use of personal cell phones for work-related purposes.

215. Defendants intentionally and willfully failed to reimburse Plaintiffs GALLEGOS and GARCIA and the Aggrieved Employees for all necessary business-related expenses and costs.

216. Such conduct violates Labor Code sections 2802.

PRAYER FOR RELIEF

PLAINTIFFS PRAY FOR RELIEF AND JUDGMENT AGAINST DEFENDANTS, JOINTLY, AND SEVERALLY, AS FOLLOWS:

ON THE FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, AND TENTH CAUSES OF ACTION:

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2. For damages, according to proof, including but not limited to unpaid wages;
3. For any and all legally applicable penalties;
4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 1194, and post-judgment interest;
5. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code section 1194; and
6. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE THIRD CAUSE OF ACTION:

1. That Defendants be found to have violated the meal period provisions of the Labor Code and the IWC Wage Order as to Plaintiffs GALLEGOS and SANCHEZ, the Meal Period Class, and the Meal Period Premium Wages Class;
2. For damages, according to proof, including unpaid premium wages;
3. For any and all legally applicable penalties;
4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and
5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FOURTH CAUSE OF ACTION:

1. That Defendants be found to have violated the rest period provisions of the Labor Code and the IWC Wage Order as to Plaintiffs GALLEGOS and SANCHEZ, the Rest Period Class, and the Rest Period Premium Wages Class;
2. For damages, according to proof, including unpaid premium wages;
3. For any and all legally applicable penalties;
4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and
5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FIFTH CAUSE OF ACTION:

1. That the Defendants be found to have violated the indemnification provisions of the Labor Code as to the Plaintiffs GALLEGOS and SANCHEZ and the Indemnification Class;

2. For damages, according to proof, including unpaid use and/or costs of necessary tools and/or resources including but not limited to mileage, vehicle use, the purchase of personal protective equipment like masks and thermometers during the COVID-19 pandemic, and the use of personal cell phone (including both telephone use and cellular data use) for work-related purposes;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 2802, and post-judgment interest;

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

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

ON THE SIXTH CAUSE OF ACTION:

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

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

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

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

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

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

ON THE SEVENTH CAUSE OF ACTION:

1. That Defendants be found to have violated Labor Code 204 as to Plaintiffs GALLEGOS and SANCHEZ and the Pay Day Class;

2. For damages, according to proof;

3. For any and all legally applicable penalties, including but not limited to those recoverable pursuant to Labor Code section 210(a);

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

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

ON THE EIGHTH CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code regarding payment of all unpaid wages due upon resignation or termination as to Plaintiffs GALLEGOS and SANCHEZ and the Waiting Time Class;

2. For damages and/or penalties, according to proof, including damages and/or statutory penalties under Labor Code section 203 and any other legally applicable damages or penalties;

3. For pre-judgment interest, including under Labor Code section 218.6, and post-judgment interest; and

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

ON THE NINTH CAUSE OF ACTION:

1. That Defendants be found to have violated Business and Professions Code sections 17200, *et seq.*, for the conduct alleged herein as to the California Class;

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

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

4. For restitution to the full extent permitted by law; and

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

3 **ON THE TENTH CAUSE OF ACTION:**

4 1. For the imposition of civil penalties pursuant to California Labor Code §§ 2699,
5 210, 558, 226, 226.3, 1174.5, 1197.1 and all other penalties allowed by the California Labor Code
6 and/or other applicable statutes;

7 2. For statutory attorneys' fees and costs pursuant to sections 210, 218.5 and
8 2699(g)(1) of California Labor Code; and

9 3. For such other and further relief as the Court may deem proper.

10 Dated: September 13, 2024

Respectfully submitted,
BLACKSTONE LAW, APC

11
12 By:



Jonathan M. Genish, Esq.
Miriam Schimmel, Esq.
Joana Fang, Esq.
Alexandra Rose, Esq.
Attorneys for Plaintiffs ROMAN RAMIREZ
GALLEGOS, individually, and on behalf of others
similarly situated and Aggrieved Employees pursuant
to the California Private Attorneys General Act, and
ALMA GARCIA, individually, and on behalf of
Aggrieved Employees pursuant to the California
Private Attorneys General Act

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19 Dated: September ___, 2024

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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21 By:

Eve Howe
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GABRIELA DE LA ROSA SANCHEZ,
on behalf of herself and others similarly situated

PROOF OF SERVICE

Gallegos, et al. v. DolEx Dollar Express
Los Angeles County Superior Court Case No. 23STCV21872

I, Stephany Sinaguinan, certify and declare as follows:

I am over eighteen years of age and not a party to the within action; my business address is 8383 Wilshire Blvd, Suite 745, Beverly Hills, California 90211. On September 13, 2024, I served a copy of the following document(s): **PLAINTIFFS' FIRST AMENDED COMPLAINT** on the interested parties as follows:

Joseph Lavi Vincent C. Granberry Eve Howe LAVI & EBRAHIMIAN, LLP 8889 W. Olympic Blvd., Suite 200 Beverly Hills, California 90211 Telephone: (310) 432-0000 Facsimile: (310) 432-0001 E-mails: jlavi@lelawfirm.com vgranberry@lelawfirm.com ehowe@lelawfirm.com whs@lelawfirm.com	<i>Attorneys for Plaintiff</i> GABRIELA DE LA ROSA SANCHEZ
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- ☒ **BY ELECTRONIC MAIL (E-MAIL):** I caused said document(s) to be delivered electronically to the addressee(s) listed above via email from email address ssina@blackstonepc.com pursuant to California Code of Civil Procedure section 1010.6(e)(1). I did not receive any electronic message or other indication that the transmission was unsuccessful.

Daniel B. Chammas Min K. Kim FORD & HARRISON LLP 350 South Grand Avenue, Suite 2300 Los Angeles, CA 90071 Telephone: (213) 237-2400 Facsimile: (213) 237-2401 E-mails: dchammas@fordharrison.com mkim@fordharrison.com lmarquez@fordharrison.com	<i>Attorneys for Defendant</i> DOLEX DOLLAR EXPRESS, INC.
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- ☒ **BY ELECTRONIC SERVICE (CASE ANYWHERE):** I caused said document(s) to be sent to the addressee(s) listed above via Case Anywhere. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

- ☒ **STATE** – I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 13, 2024 at Beverly Hills, California.


Stephany Sinaguinan