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on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE – HISTORIC COURTHOUSE**

PAOLA PADILLA, on behalf of herself and
others similarly situated,

Plaintiff,

vs.

CARDIOLOGY SPECIALISTS MEDICAL
GROUP, INC., a California corporation; and
DOES 1 to 100, inclusive,

Defendants.

Case No.: CVRI2301465

CLASS ACTION

**PLAINTIFF PAOLA PADILLA'S FIRST
AMENDED COMPLAINT FOR
DAMAGES AND RESTITUTION AND
FOR:**

- 1. FAILURE TO PAY WAGES FOR ALL HOURS OF WORK AT THE LEGAL MINIMUM WAGE RATE IN VIOLATION OF LABOR CODE SECTIONS 1194 AND 1197**
- 2. FAILURE TO PAY PROPER OVERTIME WAGES FOR DAILY OVERTIME WORKED, ALL HOURS WORKED, AND FAILURE TO INCLUDE ADDITIONAL REMUNERATION WHEN CALCULATING OVERTIME WAGES IN VIOLATION OF LABOR CODE SECTIONS 510, 1194, AND 1198**
- 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**

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5. **FAILURE TO PAY ALL ACCRUED AND VESTED VACATION/PTO WAGES IN VIOLATION OF LABOR CODE SECTION 227.3**
6. **FAILURE TO PROVIDE SICK PAY IN VIOLATION OF LABOR CODE SECTION 246**
7. **FAILURE TO INDEMNIFY EMPLOYEES FOR EMPLOYMENT-RELATED LOSSES AND EXPENDITURES IN VIOLATION OF LABOR CODE SECTION 2802**
8. **FAILURE TO TIMELY PAY EARNED WAGES DURING EMPLOYMENT IN VIOLATION OF LABOR CODE SECTION 204**
9. **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**
10. **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226**
11. **UNFAIR BUSINESS PRACTICES, IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200, *et seq.***
12. **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (“PAGA”), LABOR CODE SECTION 2698, *et seq.***

DEMAND FOR JURY TRIAL

1 COMES NOW Plaintiff PAOLA PADILLA (“Plaintiff”), who alleges and complains against
2 Defendants CARDIOLOGY SPECIALISTS MEDICAL GROUP, INC. (“Defendant
3 CARDIOLOGY SPECIALIST MEDICAL GROUP”), and DOES 1 to 100, inclusive (collectively
4 “Defendants”) as follows:

5 **INTRODUCTION**

6 1. This is a wage and hour class action lawsuit on and Private Attorneys’ General Act of
7 2004, Lab. Code §2698, et seq. (“PAGA”) representative action on behalf of Plaintiff and other
8 current and former non-exempt employees of Defendants in California seeking within the applicable
9 statute of limitations periods:

- 10 (a) failure to pay wages for all hours worked at minimum wage;
- 11 (b) failure to pay overtime wages for all overtime hours worked;
- 12 (c) failure to pay overtime at the proper overtime rate by failing to include all
13 remuneration in calculating the regular rate of pay for purposes of paying overtime;
- 14 (d) failure to authorize or permit all legally required and compliant meal periods
15 and/or pay meal period premium wages;
- 16 (e) failure to authorize or permit all legally required and compliant rest periods
17 and/or pay rest period premium wages;
- 18 (f) failure to pay accrued and vested vacation/PTO wages;
- 19 (g) failure to pay sick pay at the proper regular rate;
- 20 (h) failure to indemnify all necessary expenditures or losses incurred by employees
21 in direct consequence of discharging their duties;
- 22 (i) statutory penalties for failure to timely pay earned wages during employment;
- 23 (j) statutory waiting time penalties in the form of continuation wages for failure
24 to timely pay employees all wages due upon separation of employment;
- 25 (k) statutory penalties for failure to provide accurate wage statements; and
- 26 injunctive relief and other equitable relief, reasonable attorney’s fees pursuant to Labor Code §218.5,
27 226(e), 1194, costs, interest, liquidated damages, and civil penalties pursuant to Labor Code §2698
28 associated with Defendant’s violations of the Labor Code brought on behalf of Plaintiff and others

1 similarly situated and/or other aggrieved employees and the Labor Workforce Development Agency
2 (“LWDA”).

3 **JURISDICTION AND VENUE**

4 2. This Court has subject matter jurisdiction to hear this case because Plaintiff’s and
5 putative class members’ claims for unpaid wages, actual damages, liquidated damages, restitution,
6 and penalties sought by Plaintiff on behalf of herself and others similarly situated from Defendants
7 exceeds the minimal jurisdictional limits of the Superior Court of the State of California.

8 3. Venue is proper in Riverside County pursuant to Code of Civil Procedure §§393(a),
9 395(a) and 395.5 in that liability arose there, because at least some of the transactions that are the
10 subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices,
11 transacts business, and/or has an agent therein.

12 **PAGA ALLEGATIONS**

13 4. At all times herein set forth, PAGA was applicable to Plaintiff’s employment by
14 Defendants.

15 5. At all times herein set forth, PAGA provides that any provision of law under the Labor
16 Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the
17 Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved
18 employee on behalf of himself and other current or former employees pursuant to procedures outlined
19 in Labor Code §2699.3.

20 6. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved
21 employee,” who is any person that was employed by the alleged violator and against whom one or
22 more of the alleged violations was committed.

23 7. Plaintiff was employed by Defendants and the alleged violation was committed against
24 him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and the
25 other employees are “aggrieved employees” as defined by Labor Code §2699(c) in that they are all
26 current or former employees of Defendants, and one or more of the alleged violations were committed
27 against them.

28 8. Pursuant to Labor Code §2699.3 and 2699.5, an aggrieved employee, including

1 Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been
2 met:

3 (a) The aggrieved employee shall give written notice by online submission
4 (hereinafter “Employee’s Notice”) to the Labor & Workforce Development
5 Agency (hereinafter “LWDA”) and by U.S. Certified Mail to the employer of
6 the specific provisions of the Labor Code alleged to have been violated,
7 including the facts and theories to support the alleged violations.

8 (b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer
9 and the aggrieved employee by certified mail that it does not intend to
10 investigate the alleged violation within sixty (60) calendar days of the postmark
11 date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the
12 LWDA Notice is not provided within sixty-five (65) calendar days of the
13 postmark date of the Employee’s Notice, the aggrieved employee may
14 commence a civil action pursuant to Labor Code §2699 to recover civil penalties
15 in addition to any other penalties to which the employee may be entitled.

16 9. On March 21, 2023, Plaintiff provided written notice by online submission to the LWDA
17 and by U.S. Certified Mail to Defendant CARDIOLOGY SPECIALIST MEDICAL GROUP of the
18 specific provisions of the Labor Code alleged to have been violated, including the facts and theories
19 to support the alleged violations. Plaintiff has not received an LWDA Notice within sixty-five (65)
20 calendar days of the date of Plaintiff’s notice.

21 10. Therefore, Plaintiff has satisfied the administrative prerequisites under Labor Code
22 §2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations
23 of Labor Code §201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800
24 and 2802.

25 **PARTIES**

26 11. Plaintiff brings this action on behalf of herself and other members of the general public
27 similarly-situated. The named Plaintiff and the class of persons on whose behalf this action is filed
28 are current, former and/or future employees of Defendants who work as hourly non-exempt

1 employees. At all times mentioned herein, the currently named Plaintiff is and was a resident of
2 California and were employed by Defendants within the four years prior to the filing of the Complaint.

3 12. Defendants employed Plaintiff as an hourly non-exempt employee from in or around
4 February 2, 2021 to and including on or about January 27, 2023.

5 13. Plaintiff is informed and believes, and on that basis alleges that Defendants employed
6 Plaintiff and other hourly non-exempt employees throughout the State of California and therefore its
7 conduct forms a significant basis of the claims asserted in this matter.

8 14. Plaintiff is informed and believes and thereon alleges that Defendants CARDIOLOGY
9 SPECIALIST MEDICAL GROUP and DOES 1-25 are authorized to do business within the State of
10 California and are doing business in the State of California and/or that Defendants DOES 1-25 are,
11 and at all times relevant hereto were persons acting on behalf of Defendants in the establishment of,
12 or ratification of, the aforementioned illegal wage and hour practices or policies. Defendant
13 CARDIOLOGY SPECIALIST MEDICAL GROUP and DOES 1-25 operate in Riverside County and
14 employed Plaintiff and other putative class members in Riverside County at its business located at
15 3770 Elizabeth Street, Suite A, Riverside, California 92506.

16 15. Plaintiff is informed and believes and thereon alleges that Defendants DOES 26
17 through 75 are corporations, or are other business entities or organizations of a nature unknown to
18 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted Plaintiff
19 and aggrieved employees to work, and exercised control over the wages, hours and working
20 conditions of employment of Plaintiff and aggrieved employees.

21 16. Plaintiff is informed and believes and thereon alleges that Defendants DOES 76
22 through 100 are individuals unknown to Plaintiff. Each individual Defendant is sued individually in
23 his or her capacity as an agent, shareholder, owner, representative, manager, supervisor, independent
24 contractor and/or employee of each Defendant and participated in the establishment of, or ratification
25 of, the aforementioned illegal wage and hour practices or policies.

26 17. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
27 sues said Defendants by said fictitious names, and will amend this Complaint when the true names
28 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted

1 by law or by the Court. Plaintiff is informed and believes that each of the fictitiously named
2 Defendants is in some manner responsible for the events and allegations set forth in this Complaint.

3 18. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each
4 Defendant was an employer, was the principal, agent, partner, joint venturer, officer, director,
5 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
6 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
7 the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all
8 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
9 Complaint. Plaintiff is further informed and believes and thereon alleges that each Defendant acted
10 pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each
11 Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled,
12 aided and abetted the conduct of all other defendants. As used in this Complaint, “Defendants” means
13 “Defendants and each of them,” and refers to the Defendants named in the particular cause of action
14 in which the word appears and includes Defendant CARDIOLOGY SPECIALIST MEDICAL
15 GROUP and DOES 1 to 100, inclusive.

16 19. At all times mentioned herein, each Defendant was the co-conspirator, agent, servant,
17 employee, and/or joint venturer of each of the other Defendants and was acting within the course and
18 scope of said conspiracy, agency, employment, and/or joint venture and with the permission and
19 consent of each of the other Defendants.

20 20. Plaintiff makes the allegations in this Complaint without any admission that, as to any
21 particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff
22 reserves all of Plaintiff rights to plead in the alternative.

23 **DESCRIPTION OF ILLEGAL PAY PRACTICES**

24 21. Pursuant to Industrial Welfare Commission (“IWC”) Wage Order 16 (“Wage Order”),
25 codified at California Code of Regulations title 8, §11010, Defendants are employers of Plaintiff
26 within the meaning of Wage Order 1 and §18 of the California Labor Code. Therefore, each of these
27 Defendants is jointly and severally liable for the wrongs complained of herein in violation of the
28 Wage Order and the California Labor Code.

1 **22. Failure to Pay Wages for All Hours Worked at the Legal Minimum Wage:**
2 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees.
3 In California, an employer is required to pay hourly employees for all “hours worked” at least the
4 minimum wage rate of pay which includes all time that an employee is under the control of the
5 employer and all time the employee is suffered and permitted to work as established by the Industrial
6 Welfare Commission (“IWC”) and the Wage Orders. This includes the time an employee spends,
7 either directly or indirectly, performing services which inure to the benefit of the employer.

8 23. Plaintiff and similarly situated hourly non-exempt employees worked more minutes
9 per shift than Defendants credited them with having worked. Defendants failed to pay Plaintiff and
10 similarly situated employees all wages at the applicable minimum wage for all hours worked due to
11 Defendants’ policies, practices, and/or procedures.

12 **24. Failure to Pay Overtime at the Proper Overtime Rate by Failing to Include All**
13 **Remuneration in Calculating the Regular Rate of Pay for Purposes of Paying Overtime:**
14 Defendants employ hourly non-exempt employees, including Plaintiff and others similarly situated,
15 with a compensation structure that includes additional remuneration, including an additional “bonus”
16 pay.

17 25. California Labor Code §510 and 1194 require an employer to compensate employees
18 a higher rate of pay for hours worked in excess of eight hours in a workday:

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

26 (Cal. Lab. Code §510.)

27 26. Regarding the “regular rate,” overtime is based upon an employee’s regular rate of
28 pay. “The regular rate at which an employee is employed shall be deemed to include all remuneration
for employment paid to, or on behalf, of the employee.” See Division of Labor Standards
Enforcement – Enforcement Policies and Interpretations Manual, §49.1.2.

1 27. At times, Plaintiff and similarly situated employees worked overtime hours under state
2 law during pay periods that they earned the additional “bonus” pay. Despite the fact that California
3 law requires employers to include all remuneration as part of the regular rate of pay for determining
4 overtime premium pay, Defendants entirely excluded Plaintiff’s and similarly situated hourly non-
5 exempt employees’ additional “bonus” pay in calculating those employees’ overtime rate of pay.

6 28. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff and
7 other similarly situated hourly non-exempt employees working hours in excess of eight hours in a
8 workday and/or 40 hours in a workweek and Defendants paying them less overtime than they earned
9 pursuant to California law.

10 29. **Failure to Authorize or Permit All Legally Required and Compliant Meal Periods**
11 **and/or Failure to Pay Meal Period Premium Wages and/or Pay Meal Period Premium Wages**
12 **at Employees’ Regular Rate of Pay:** Defendants often employed hourly non-exempt employees,
13 including the named Plaintiff and similarly situated employees, for shifts longer than five (5) hours
14 in length and shifts longer than ten (10) hours in length.

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

28 31. In this case, Plaintiff and similarly situated employees worked shifts long enough to

1 entitle them to meal periods under California law. Nevertheless, Defendants employed policies,
2 practices, and/or procedures that resulted in their failure to authorize or permit meal periods to
3 Plaintiff and similarly situated employees of not less than thirty (30) minutes for each five-hour period
4 of work as required by law.

5 32. Defendants' foregoing policies, practices, and/or procedures cut into Plaintiff's and
6 similarly situated employees' meal periods rendering them less than 30 minutes and resulting in
7 Defendants' failure to provide meal periods of at least 30 minutes.

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

14 34. During pay periods Defendants paid Plaintiffs and similarly situated employees
15 additional "bonus" pay and meal period premium wages for missed, late, short, or interrupted meal
16 periods, Defendants failed to pay the meal period premium wages at one (1) hour of pay at Plaintiff's
17 and similarly situated employees' regular rate of pay due to Defendants' failure to include the
18 additional "bonus" pay when calculating Plaintiff's and similarly situated employees regular rate of
19 pay for the purpose of paying premium wages.

20 35. The aforementioned policies, practices, and/or procedures of Defendants resulted in
21 Plaintiff and similarly situated employees not being provided with all legally required and/or
22 compliant meal periods and/or not receiving premium wages to compensate them for such instances,
23 all in violation of California law.

24 36. **Failure to Authorize and Permit All Legally Required and Compliant Rest**
25 **Periods and/or Failure to Pay Rest Period Premiums:** Defendants often employed non-exempt
26 employees, including the named Plaintiff and similarly situated employees, for shifts of more than
27 three-and-a-half (3.5) hours.

28 37. California law requires every employer to authorize and permit an employee a rest

1 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor Code
2 §226.7; Wage Order 4 at §12. If the employer fails to authorize or permit a required rest period, the
3 employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation
4 for each workday the employer did not authorize or permit a legally required rest period. *Id.* Under
5 California law, "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six
6 hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of
7 more than 10 hours up to 14 hours, and so on." (*Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)*
8 (2012) 53 Cal.4th 1004, 1029; Labor Code §226.7; Wage Order 4 at §12). Rest periods, insofar as
9 practicable, shall be in the middle of each work period. (Wage Order 4 at §12). Additionally, the rest
10 period requirement "obligates employers to permit – and authorizes employees to take – off-duty rest
11 periods." (*Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269). That is, during rest
12 periods employers must relieve employees of all duties and relinquish control over how employees
13 spend their time. *Id.*

14 38. In this case, Plaintiff and similarly situated employees regularly worked shifts of more
15 than three-and-a-half (3.5) hours. Nevertheless, Defendants employed policies, practices, and/or
16 procedures that resulted in their failure to authorize or permit all legally required and/or compliant
17 rest periods to Plaintiff and similarly situated employee by failing to provide duty-free rest periods of
18 a net 10-minutes for every four hours worked or major fraction thereof.

19 39. Additionally, Defendants failed to pay Plaintiff and similarly situated employees a rest
20 period premium wage of one (1) additional hour of pay at their regular rate of compensation for each
21 workday the employees did not receive all legally required and/or legally compliant rest periods.
22 Defendants employed policies and procedures which ensured that employees did not receive any rest
23 period premium wages to compensate them for workdays in which they did not receive all legally
24 required and compliant rest periods.

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

1 41. **Failure to Pay Accrued and Vested Vacation Wages:** Defendants had a policy
2 and/or procedure of providing its employees with paid vacation time and/or personal time off
3 (“Vacation/PTO”).

4 42. Vacation/PTO wages are deferred wages that vest once accrued. California Labor
5 Code § 227.3 provides that an employer must pay its employees all unused vested vacation/PTO at
6 the time of termination at the employees’ final rate of pay.

7 43. Defendants had a vacation policy in which Plaintiff and other similarly situated
8 employees accrued vacation/PTO wages.

9 44. Defendants terminated Plaintiff and other similarly situated employees without paying
10 them the full amount of their earned vacation/PTO wages, in violation of California law, and
11 employed policies and procedures which ensured Plaintiff and those similarly situated would not
12 receive their accrued and vested vacation/PTO wages upon termination.

13 45. **Failure to Pay Sick Pay at the Proper Rate:** Defendants failure to pay sick pay to
14 Plaintiff and similarly situated employees at the correct rate. Plaintiff received compensation in
15 addition to hourly wages, but those additional amounts were not included when calculating sick pay
16 wages. Instead, Defendants paid Plaintiff and similarly situated employees at their base hourly rate
17 of pay.

18 46. **Failure to Indemnify Employees for Losses and Expenditures Incurred as Part of**
19 **Their Employment:** Labor Code §2802(a) states that “[a]n employer shall indemnify his or her
20 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
21 the discharge of his or her duties, or of his or her obedience to the directions of the employer...” An
22 employer is prohibited from passing the ordinary business expenses and losses of the employer onto
23 the employee. (Labor Code section 2802).

24 47. Defendants employed policies, practices, and/or procedures of impermissibly passing
25 business-related expenses to Plaintiffs and similarly situated employees.

26 48. The costs incurred by Plaintiff and similarly situated employees to pay for their own
27 mandatory compliance with Defendants’ aforementioned policies, practices, and/or procedures were
28 significant as a result of their employment with Defendants.

1 49. Defendants employed policies and procedures which ensured Plaintiff and similarly
2 situated employees would not receive indemnification for the aforementioned necessary expenditures
3 incurred as a result of their employment with Defendants.

4 50. Defendants' aforementioned policies, practices, and/or procedures resulted in
5 Plaintiffs and similarly situated California-based employees not receiving indemnification for
6 employment-related expenditures, in violation of Labor Code §2802.

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

15 52. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to
16 timely pay Plaintiff's and similarly situated employees' earned wages (as stated herein above) in
17 violation of Labor Code §204.

18 53. Defendants' aforementioned policies, practices, and/or procedures resulted in their
19 failure to pay Plaintiff and similarly situated employees their earned wages within the applicable time
20 frames outlined in Labor Code §204.

21 54. **Failure to Timely Pay All Wages Due at the Time of Termination/Resignation:**
22 An employer is required to pay all unpaid wages timely after an employee's employment ends. The
23 wages are due immediately upon termination (California Labor Code §201) or within 72 hours of
24 resignation (California Labor Code §202).

25 55. As a result of the aforementioned violations of the Labor Code, Plaintiff alleges that
26 she, and other similarly situated employees, were not paid their final wages in a timely manner as
27 required by Labor Code §203. Minimum wages for all hours worked, overtime wages for overtime
28 hours worked and overtime wages at the proper overtime rate, meal period premium wages, meal

1 period premium wages at the regular rate of pay, rest period premium wages, rest period premium
2 wages at the regular rate of pay, all accrued and vested vacation/PTO wages, sick pay, and
3 reimbursement pay (all described above), were not paid at the time of Plaintiff's and other similarly
4 situated employees' separation of employment, whether voluntarily or involuntarily, as required by
5 Labor Code §201, 202, and 203.

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

18 **57.** Defendants failed to provide accurate and complete wage statements to Plaintiff and
19 similarly situated employees. Defendants provided to employees wage statements which were
20 inadequate as a result of the aforementioned conduct (i.e., failure to pay all minimum wage and
21 overtime for all hours worked; failure to pay meal and rest period premiums; failure to pay
22 vacation/PTO; failure to pay sick pay; failure to pay reimbursement pay), the wage statements
23 inaccurately stated: the gross wages earned, total hours worked by the employee, the net wages
24 earned, and applicable hourly rates in effect in a pay period with corresponding number of hours
25 worked.

26 **58.** Defendants applied these policies and procedures to Plaintiff and other similarly
27 situated employees which resulted in Defendants failing to provide complete and accurate wage
28 statements to non-exempt employees in compliance with Labor Code §226, subdivision (a).

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

C. **Regular Rate Class:** All current and former non-exempt employees employed by Defendants in California at any time within the four years prior to the filing of the initial complaint in this action and through the date notice is mailed to a certified class, who earned commissions, bonuses, service charges, shift-differential pay or other non-hourly compensation which were not included in calculating the overtime pay earned during pay periods the employees earned the bonuses and worked in excess of 8 hours in a workday, 40 hours in a workweek, or on a seventh consecutive day of work in a workweek.

E. **Meal Period Premium Wages Class:** All current and former hourly non-exempt employees employed by Defendants in California at any time from four (4) years prior to the filing of the initial Complaint in this matter through the date notice is mailed to a certified class who received additional remuneration including, but not limited to, an additional \$5/hour “hero pay”

1 during pay periods in which they were paid meal period premium wages and whose regular rate of
2 pay did not include additional remuneration including, but not limited to, an additional \$5/hour “hero
3 pay” when Defendants calculated those employees’ meal period premium wages.

4 **F. Rest Period Class:** All current and former hourly non-exempt employees
5 employed by Defendants in California at any time within the four years prior to the filing of the initial
6 Complaint in this action and through the date notice is mailed to a certified class who worked at least
7 three and one-half (3.5) or more hours in a day who did not receive required rest periods of ten net
8 minutes rest time for every four hours worked between three and one-half and six hours, six and ten
9 hours, or ten and fourteen hours.

10 **G. Rest Period Premium Wages Class:** All current and former hourly non-
11 exempt employees employed by Defendants in California at any time from four (4) years prior to the
12 filing of the initial Complaint in this matter through the date notice is mailed to a certified class who
13 received additional remuneration including, but not limited to, an additional \$5/hour “hero pay”
14 during pay periods in which they were paid rest period premium wages and whose regular rate of pay
15 did not include additional remuneration including, but not limited to, an additional \$5/hour “hero pay”
16 when Defendants calculated those employees’ rest period premium wages

17 **H. Vacation Pay Class:** All current and former non-exempt employees employed
18 by Defendants in California at any time within the four (4) years prior to the filing of the initial
19 complaint in this action and through the date notice is mailed to a certified class who accrued vacation
20 time/personal time off, yet Defendants did not pay all wages due for vested vacation time/personal
21 time off upon separation of employment.

22 **I. Sick Pay Class:** All current and former non-exempt employees employed by
23 Defendants in California as direct employees as well as temporary employees employed through
24 temporary employment agencies at any time from four (4) years prior to the filing of the initial
25 Complaint in this matter through the date notice is mailed to a certified class who were paid sick pay
26 in a period in which they earned any other pay that should have been included in their sick pay wages.

27 **J. Indemnification Class:** All current and former hourly non-exempt employees
28 employed by Defendants in California at any time from four (4) years prior to the filing of the initial

1 Complaint in this action through the date notice is mailed to a certified class who did not receive
2 indemnification to reimburse them for the necessary expenditures incurred in the discharge of their
3 duties.

4 K. **Pay Day Class:** All current and former hourly non-exempt employees
5 employed by Defendants in California at any time from four (4) years prior to the filing of the initial
6 Complaint in this action through the date notice is mailed to a certified class who were not timely
7 paid earned wages during their employment.

8 L. **Waiting Time Class:** All current and former hourly non-exempt employees
9 employed by Defendants in California at any time within the three years prior to the filing of the
10 initial Complaint in this action and through the date notice is mailed to a certified class who did not
11 receive payment of all unpaid wages upon separation of employment within the statutory time period.

12 M. **Wage Statement Class:** All current and former non-exempt employees
13 employed by Defendants in California at any time within the one year prior to the filing of the initial
14 complaint in this action and through the date notice is mailed to a certified class who received
15 inaccurate or incomplete wage statements.

16 N. **California Class:** All aforementioned classes are here collectively referred to
17 as the “California Class.”

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

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

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

27 i. Whether Defendants violated California Labor Code §1194 and 1197
28 by not paying employees’ wages at a minimum wage rate for all time that the Minimum Wage Class

Members were subject to Defendants' control but were not paid;

ii. Whether Defendants violated California Labor Code §510 and 1194 by not paying employees' wages at an overtime wage rate for all overtime hours that the Overtime Class

Members were subject to Defendants' control but were not paid;

iii. Whether Defendants violated Labor Code §510 and 1194 by failing to include all remuneration when calculating the overtime rate of pay for the members of the Regular Rate Class;

iv. Whether Defendants violated California Labor Code §512 and 226.7, as well as the applicable Wage Order, by employing Meal Period Class Members and Meal Period Premium Class Members without providing all their required meal periods, paying meal period premium wages, or not including all remuneration when paying meal period premium wages;

v. Whether Defendants violated California Labor Code §226.7 by employing Rest Period Class Members and Rest Period Premium Wages Class Members without providing all their required rest periods, paying rest period premium wages, or not including all remuneration when paying rest period premium wages;

vi. Whether Defendants violated California Labor Code §227.3 by failing to pay the Vacation Pay Class Members all vacation time/personal time off wages due to them upon termination;

vii. Whether Defendants failed to pay sick pay to the Sick Pay Class at the correct rate;

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

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

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

1 xi. Whether Defendants unlawfully failed to furnish the Wage Statement
2 Class with proper accurate itemized wage statements;

3 xii. Whether Defendants committed unlawful business acts or practice
4 within the meaning of Business and Professions Code §17200 *et seq.*;

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

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

9 xv. Whether Defendants' affirmative defenses, if any, raise any common
10 issues of law or fact as to Plaintiff and as to the Class Members as a whole.

11 C. **Typicality:** Plaintiff's claims are typical of the claims of the class members in
12 each of the classes. Plaintiff and members of the Minimum Wage Class sustained damages arising
13 out of Defendants' failure to pay wages at least at minimum wage for all time the employees were
14 subject to Defendants' control. Plaintiff and members of the Overtime Wage Class and/or Regular
15 Rate Class sustained damages arising out of Defendants' failure to pay overtime wages for overtime
16 hours the employees were subject to Defendant's control worked and/or overtime wages at the proper
17 overtime rate of pay. Plaintiff and the members of the Meal Period Class and Meal Period Premium
18 Wages Class sustained damages arising out of Defendants' failure to provide employees meal periods
19 of not less than 30 minutes and failure to pay meal period premium wages as compensation or failure
20 to pay meal period premiums wages at the regular rate of pay. Plaintiff and the Members of the Rest
21 Period Class and Rest Period Premium Wages Class sustained damages arising out of Defendants'
22 failure to provide non-exempt employees rest periods of a net 10 minutes and failure to pay rest period
23 premium wages as compensation or failure to pay rest period premium wages at the regular rate of
24 pay. Plaintiff and the members of the Vacation Pay Class sustained damages arising out of
25 Defendants' failure to pay all accrued and vested vacation/PTO wages upon separation of
26 employment. Plaintiff. Plaintiff and members of the Sick Pay Class sustained damages arising out of
27 Defendants' failure to properly calculate and pay sick pay. Plaintiff and the members of the
28 Indemnification Class sustained damages arising out of Defendants' failure to reimburse them for

1 expenses incurred in the discharge of their duty. Plaintiff and the members of the Pay Day Class
2 sustained damages out of Defendants' failure to timely pay their earned wages during their
3 employment. Plaintiff and members of the Waiting Time Class sustained damages arising out of
4 Defendants' failure to provide all unpaid yet earned wages due upon separation of employment within
5 the statutory time limit. Plaintiff and members of the Wage Statement Class sustained damages arising
6 out of Defendants' failure to furnish them with accurate itemized wage statements in compliance with
7 Labor Code §226.

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

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

22 F. **Public Policy Consideration:** Employers throughout the state violate wage
23 and hour laws. Current employees often are afraid to assert their rights out of fear of direct or indirect
24 retaliation. Former employees fear bringing actions because they perceive their former employers
25 can blacklist them in their future endeavors with negative references and by other means. Class
26 actions provide the class members who are not named in the Complaint with a type of anonymity that
27 allows for vindication of their rights.
28

1 **FIRST CAUSE OF ACTION**

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

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

4 **(By Plaintiff and the Minimum Wage Class As Against all Defendants and Doe Defendants)**

5 61. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
6 by reference.

7 62. At all times relevant to this Complaint, Plaintiff and the members of the Minimum
8 Wage Class were hourly non-exempt employees of Defendants.

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

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

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

19 66. Pursuant to California Labor Code §1194 and 1194.2, Plaintiff and the Minimum
20 Wage Class members are entitled to recover unpaid minimum wage, interest thereon, liquidated
21 damages in the amount of their unpaid minimum wage, and attorneys' fees and costs.

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PAY PROPER OVERTIME WAGES FOR DAILY OVERTIME WORKED,**
24 **ALL HOURS WORKED, AND FAILURE TO INCLUDE ADDITIONAL REMUNERATION**

25 **WHEN CALCULATING OVERTIME WAGES IN VIOLATION OF LABOR CODE**

26 **SECTIONS 510, 1194, AND 1198**

27 **(By Plaintiff, the Overtime Class, and the Regular Rate Class As Against All Defendants and**
28 **Doe Defendants)**

1 67. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
2 by reference.

3 68. At times relevant to this Complaint, Plaintiff and members of the Overtime Class were
4 hourly non-exempt employees of Defendants, covered by Labor Code §510 and 1194 and the Wage
5 Order.

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

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

20 71. Further, Labor Code §1198 provides,

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

25 72. Regarding the “regular rate,” overtime is based upon an employee’s regular rate of
26 pay. “The regular rate at which an employee is employed shall be deemed to include all remuneration
27 for employment paid to, or on behalf, of the employee.” *See* Division of Labor Standards
28 Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1

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

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

75. Additionally, Defendants maintained a policy, practice, and procedure whereby they entirely excluded Plaintiffs' and Regular Rate Class Members' additional remuneration including, but not limited to, an additional "bonus" pay in calculating Plaintiff's and Regular Rate Class Members' regular rate of pay for purposes of calculating the overtime rate of pay. This practice resulted in Plaintiff and Regular Rate Class Members working hours in excess of eight hours in a workday and/or 40 hours in a workweek and Defendants paying them less overtime than they earned pursuant to California law.

76. As a result of Defendants' unlawful conduct, Plaintiff, Overtime Class Members, and Regular Rate Class Members have suffered damages in an amount subject to proof, to the extent that they were not paid at their overtime rate of pay for all hours worked which constitute overtime.

77. Pursuant to Labor Code §1194, Plaintiff, Overtime Class Members, and Regular Rate Class Members are entitled to recover the full amount of their unpaid overtime wages, prejudgment interest, and attorneys' fees and costs.

THIRD CAUSE OF ACTION

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

**(By Plaintiff, the Meal Period Class, and the Meal Period Premium Wages Class As Against
All Defendants and Doe Defendants)**

78. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

79. California law requires an employer to provide an employee an uninterrupted meal period of no less than 30-minutes before the end of a five hour work period. (Lab. Code §512; Wage Order 4 at §11.) An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes before

1 the end of a ten hour work period. (*Id.*) If the employee is not relieved of all duty during a meal period,
2 the meal period shall be considered an “on duty” meal period and counted as time worked. A paid
3 “on duty” meal period is only permitted when 1) the nature of the work prevents an employee from
4 being relieved of all duty and 2) the parties have a written agreement agreeing to on duty meal periods.
5 If the employee is not free to leave the work premises or worksite during the meal period, even if the
6 employee is relieved of all other duty during the meal period, the employee is subject to the
7 employer’s control and the meal period is counted as time worked. If an employer fails to provide an
8 employee a meal period in accordance with the law, the employer must pay the employee one hour
9 of pay at the employee’s regular rate of compensation for each work day that a legally required meal
10 period was not provided or was not duty free. (*Id.*)

11 80. Plaintiff and Meal Period Class Members would work on workdays in shifts long
12 enough to entitle them to meal periods under California law. Despite that California law requires
13 employers to provide employees with timely duty free meal periods when they have worked a
14 sufficient amount of hours, Defendants failed to provide employees a timely full thirty minute meal
15 period for each five hour period of work as required by law.

16 81. At times, Plaintiff and California non-exempt employees would work in excess of 10
17 hours which would entitled them to a second meal period before the 10th hour of work. Defendants
18 did not provide Plaintiff and California non-exempt employees with a second meal period when they
19 worked in excess of 10 hours. Defendants did not have a procedure in place to pay Plaintiff and
20 California non-exempt employees a premium wage for their missed meal periods when they did not
21 receive a second meal period. Accordingly, Defendants did not pay Plaintiff and California non-
22 exempt employees a premium wage when they did not receive a second meal period.

23 82. Defendants’ policies and procedures resulted in Plaintiff and all other similarly
24 situated employees not receiving wages to compensate them for workdays which Defendants did not
25 provide them with legally compliant meal periods in compliance with California law.

26 83. Defendants’ policies and procedures made it impossible for Plaintiff and other Meal
27 Period Class members from receiving all legally required and timely meal breaks or from Defendants
28 making such meal breaks available to Plaintiff and other Meal Period Class Members when they

1 worked a minimum of five hours in a work period.

2 84. On occasions Defendants paid Plaintiff and Meal Period Premium Wages Class
3 members meal period premium wages for missed, late, short, or interrupted meal periods in the same
4 pay period they earned additional remuneration including, but not limited to, an additional “bonus”
5 pay, Defendants failed to pay the meal period premium wages at one (1) hour of pay at the regular
6 rate of pay due to Defendants’ failure to include additional remuneration including, but not limited
7 to, an additional “bonus” pay when calculating Plaintiff’s and Meal Period Premium Wages Class
8 members’ regular rate of pay for the purpose of paying meal period premiums.

9 85. Defendants employed policies and procedures which ensured Plaintiff, Meal Period
10 Class members, and Meal Period Premium Class members did not receive premium wages, or
11 premium wages at the regular rate, to compensate them for workdays that they did not receive legally
12 compliant meal periods. This practice resulted in Plaintiff, Meal Period Class members, and Meal
13 Period Premium Class members, not receiving premium wages, or receiving less premium wages, to
14 compensate them for workdays which Defendants did not provide them with all required meal
15 periods, in compliance with California law.

16 86. Defendants’ unlawful conduct alleged herein occurred in the course of employment of
17 Plaintiff and Meal Period Class Members and such conduct has continued through the filing of this
18 Complaint.

19 87. Because Defendants failed to provide employees with meal periods and/or pay meal
20 period premium wages in compliance with the law, Defendants are liable to Plaintiff, Meal Period
21 Class Members, and Meal Period Premium Class for one (1) hour of additional pay at the regular rate
22 of compensation for each workday that Defendants did not provide all legally required and legally
23 compliant meal periods and/or pay proper meal period premium wages, pursuant to Labor Code
24 §226.7 and the Wage Order.

25 88. Plaintiff, on behalf of herself, the Meal Period Class, and the Meal Period Premium
26 Class seeks damages and all other relief allowable, including a meal period premium wage for each
27 workday Defendants failed to provide all legally required and legally compliant meal periods and/or
28 pay proper meal period premium wages, plus pre-judgment interest.

1 **FOURTH CAUSE OF ACTION**

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

4 **(By Plaintiff, the Rest Period Class, and the Rest Period Premium Wages Class As Against All**
5 **Defendants and Doe Defendants)**

6 89. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
7 by reference.

8 90. At all times relevant to this Complaint, Plaintiff and members of the Rest Period Class
9 were employees of Defendants, covered by Labor Code §226.7 and the Wage Order.

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

24 92. In this case, Plaintiff and members of the Rest Period Class regularly worked shifts of
25 more than three-and-a-half (3.5) hours. Nevertheless, Defendants employed policies, practices, and/or
26 procedures that resulted in their failure to authorize or permit all legally required and compliant rest
27 periods to Plaintiff and Rest Period Class Members. Specifically, Defendants’ policies, practices,
28 and/or procedures failed to provide Plaintiff and Rest Period Class members with duty free rest

1 periods of a net 10-minutes for every four hours worked or major fraction thereof.

2 93. Additionally, Defendants failed to pay Plaintiff and members of the Rest Period Class
3 one (1) hour of pay at their regular rate of pay for each workday they did not receive all legally
4 required and legally compliant rest periods. Defendants lacked a policy and procedure for
5 compensating Plaintiff and Rest Period Class Members with premium wages when they did not
6 receive all legally required and legally compliant rest periods.

7 94. On occasions Defendants paid Plaintiff and Rest Period Premium Wages Class
8 members rest period premium wages for missed, late, short, or interrupted rest periods in the same
9 pay period they earned bonus compensation, commissions, and/or incentives, Defendants failed to
10 pay the rest period premium wages at one (1) hour of pay at the regular rate of pay due to Defendants'
11 failure to include additional remuneration including, but not limited to, an additional \$5/hour "hero
12 pay" when calculating when calculating Plaintiff's and Rest Period Premium Wages Class members'
13 regular rate of pay for the purpose of paying rest period premiums.

14 95. Defendants employed policies and procedures which ensured Plaintiff, Rest Period
15 Class members, and Rest Period Premium Class members did not receive premium wages, or
16 premium wages at the regular rate, to compensate them for workdays that they did not receive legally
17 compliant rest periods. This practice resulted in Plaintiffs, Rest Period Class members, and Rest
18 Period Premium Class member, not receiving premium wages, or receiving less premium wages, to
19 compensate them for workdays which Defendants did not provide them with all required rest periods,
20 in compliance with California law.

21 96. Defendants' unlawful conduct alleged herein occurred in the course of employment of
22 Plaintiff Rest Period Class members, and Rest Period Premium Wages Class members and such
23 conduct has continued through the filing of this Complaint.

24 97. Plaintiff, on behalf of herself, the Rest Period Class, and Rest Period Premium Wages
25 Class, seeks damages and all other relief allowable, including a rest period premium wage for each
26 workday Defendants failed to provide all required rest periods and/or failed to include all
27 remuneration when calculating the rest period premiums, plus pre-judgment interest.

28 98. Thus, Plaintiff, Rest Period Class members, and Rest Period Premium Class members

1 are entitled to one hour of pay for each workday Defendants did not provide them all required rest
2 periods, and/or pay them rest period premiums at the regular rate, plus pre-judgment interest.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY ALL ACCRUED AND VESTED VACATION/PTO WAGES IN**
5 **VIOLATION OF LABOR CODE SECTION 227.3**

6 **(By Plaintiff and the Vacation Pay Class As Against All Defendants and Doe Defendants)**

7 99. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
8 by reference.

9 100. At times relevant to this Complaint, Plaintiff and the members of the Vacation Pay
10 Class were non-exempt employees of Defendants, covered by California Labor Code §227.3.

11 101. California Labor Code §227.3 states in relevant part

12 Unless otherwise provided by a collective-bargaining agreement, whenever a contract
13 of employment or employer policy provides for paid vacations, and an employee is
14 terminated without having taken off his vested vacation time, all vested vacation shall
15 be paid to him as wages at his final rate in accordance with such contract of
16 employment or employer policy respecting eligibility or time served....

16 102. Defendants employ policies which provide for vacation/PTO to Plaintiff and Vacation
17 Pay Class.

18 103. Wages vest during the pay period in which they are earned. Plaintiff and members of
19 the Vacation Pay Class earned vacation/PTO wages while employed by Defendants. Defendants
20 terminated Vacation Pay Class Members and failed to pay all earned and vested vacation/PTO wages
21 upon termination.

22 104. Defendants employed policies and procedures which ensured Plaintiff and members
23 of the Vacation Pay Class would not receive their accrued and vested vacation/PTO wages upon
24 termination.

25 105. Pursuant to California Labor Code §227.3, Plaintiff and members of the Vacation Pay
26 Class seek their earned and vested vacation/PTO wages, plus interest thereon, for the four years
27 preceding the filing of this Complaint.

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE SICK PAY IN VIOLATION OF LABOR CODE SECTION 246**

3 **(By Plaintiff and the Sick Pay Class As Against All Defendants and Doe Defendants)**

4 106. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
5 by reference.

6 107. Sick pay must be compensated at the employee's regular rate of pay, for the workweek
7 in which the paid leave was taken, or at a rate determined by averaging over 90 days. Labor Code
8 §246(1).

9 108. By failing to pay Plaintiff and the Sick Pay Class for sick pay at the correct rate,
10 Defendants willfully violated Labor Code §246.

11 109. Defendants' unlawful acts deprived Plaintiff and the Sick Pay Class of sick pay in
12 amounts to be determined at trial, and they are entitled to recover these amounts, with interest,
13 attorneys' fees, and costs.

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO INDEMNIFY EMPLOYEES FOR EMPLOYMENT-RELATED LOSSES**

16 **AND EXPENDITURES IN VIOLATION OF LABOR CODE SECTION 2802**

17 **(By Plaintiff and the Indemnification Class Against All Defendants and Doe Defendants)**

18 110. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
19 by reference.

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

26 112. Defendants violated Labor Code §2802 by employing policies, practices, and/or
27 procedures of impermissibly passing business-related expenses to Plaintiff and Indemnification Class
28 Members.

113. The costs incurred by Plaintiff and Indemnification Class Members for their mandatory compliance with Defendants' policies, practices, and/or procedures were significant as a result of their employment with Defendants.

114. Moreover, Defendants employed policies and procedures which ensured that Plaintiff and Indemnification Class Members would not receive indemnification for all necessary expenditures or losses incurred by them in direct consequence of discharging their duties. Defendants' aforementioned policies, practices, and/or procedures resulted in Plaintiff and Indemnification Class Members not receiving indemnification for employment-related expenditures in compliance with California law.

115. Because Defendants failed to indemnify employees for the necessary expenditures incurred in the discharge of their duties, they are liable to Plaintiff and Indemnification Class Members for monies to compensate them for such expenditures or losses pursuant to Labor Code §2802.

116. As a direct and proximate result of Defendants' violation of Labor Code §2802, Plaintiff and Indemnification Class Members have suffered irreparable harm and monetary damages entitling them to both injunctive relief and restitution. Plaintiff, on behalf of herself and on behalf of the Indemnification Class, seeks damages and all other relief allowable including indemnification for all employment-related expenses as well as ordinary business expenses incurred by Defendants and passed on to Plaintiff and Indemnification Class Members, pursuant to Labor Code §2802.

117. Pursuant to Labor Code §2802, Plaintiff and Indemnification Class Members are entitled to recover full indemnification, reasonable attorneys' fees and costs of suit.

EIGHTH CAUSE OF ACTION

FAILURE TO TIMELY PAY EARNED WAGES DURING EMPLOYMENT IN VIOLATION OF LABOR CODE SECTION 204

(By Plaintiff and the Pay Day Class As Against All Defendants and Doe Defendants)

118. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

119. Plaintiff and the Pay Day Class have been employed by Defendants in the State of

1 California. In California, wages must be paid at least twice during each calendar month on days
2 designated in advance by the employer as regular paydays, subject to some exceptions. Labor Code
3 §204(a). Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid
4 between the 16th and the 26th day of that month and wages earned between the 16th and the last day,
5 inclusive, of any calendar month must be paid between the 1st and 10th day of the following month.
6 *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within
7 seven (7) calendar days following the close of the payroll period in which wages were earned. Labor
8 Code §204(d).

9 120. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to
10 timely pay Plaintiff's and the Pay Day Class's earned wages (as stated herein above) in violation of
11 Labor Code §204.

12 121. Defendants' aforementioned policies, practices, and/or procedures resulted in their
13 failure to pay Plaintiff and the Pay Day Class their earned wages within the applicable time frames
14 outlined in Labor Code §204.

15 122. Defendants' failure to timely pay Plaintiff and the Pay Day Class their earned wages
16 in accordance with Labor Code §204 was willful. Defendants had the ability to timely pay all wages
17 earned by hourly workers in accordance with Labor Code §204, but intentionally adopted policies or
18 practices incompatible with the requirements of Labor Code §204. When Defendants failed to timely
19 pay Plaintiff and the Pay Day Class all earned wages, they knew what they were doing and intended
20 to do what they did.

21 123. As a result of Defendants' unlawful conduct, Plaintiff and the Pay Day Class have
22 suffered damages in an amount subject to proof, to the extent that they were not timely paid their
23 earned wages pursuant to Labor Code §204.

24 124. Pursuant to Labor Code §210, Plaintiff and the Pay Day Class are entitled to recover
25 civil penalties as follows: (1) for any initial violation, one hundred dollars (\$100) for each failure to
26 pay each employee; and (2) for each subsequent violation, or any willful or intentional violation, two
27 hundred dollars (\$200) for each failure to pay each employee, plus twenty-five (25%) percent of the
28 amount unlawfully withheld.

NINTH CAUSE OF ACTION

**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

(By Plaintiff and the Waiting Time Class As Against all Defendants and Doe Defendants)

125. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

126. At all times relevant to this Complaint, Plaintiff and the other members of the Waiting Time Class were employees of Defendants, covered by California Labor Code §§201 202.

127. Pursuant to California Labor Code §§201 and 202, Plaintiff and members of the Waiting Time Class were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Employees who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid prior to resignation at the time of resignation.

128. Defendants failed to pay Plaintiff and members of the Waiting Time Class all wages earned and unpaid prior to separation of employment, in accordance with either California Labor Code section 201 or 202. Plaintiff is informed and believes and thereon alleges that at all relevant times within the limitations period applicable to this cause of action Defendants maintained a policy or practice of not paying hourly employees all earned wages timely upon separation of employment.

129. Defendants' failure to pay Plaintiff and members of the Waiting Time Class all wages earned prior to separation of employment timely in accordance with California Labor Code §§201 and 202 was willful. Defendants had the ability to pay all wages earned by Waiting Time Class Members prior to separation of employment in accordance with California Labor Code §201 and 202, but intentionally adopted policies or practices incompatible with the requirements of California Labor Code §§201 and 202. Defendants' practices include failing to pay at least minimum wage for all time worked, failing to pay overtime wages for overtime hours worked, failing to pay overtime wages at

1 the proper overtime rate of pay, failing to pay premium wages for workdays Defendants did not
2 provide employees all meal periods in compliance with California law, and failing to pay premium
3 wages for workdays Defendants did not provide employees all rest periods in compliance with
4 California law, failure to pay all accrued and vested vacation/PTO wages upon termination, sick pay,
5 and indemnification pay. When Defendants failed to pay its hourly non-exempt workers all earned
6 wages timely upon separation of employment, it knew what they were doing and intended to do what
7 it did.

8 130. Pursuant to either California Labor Code §§201 or 202, Plaintiff and members of the
9 Waiting Time Class are entitled to all wages earned prior to separation of employment that Defendants
10 did not pay them.

11 131. Pursuant to California Labor Code §203, Plaintiff and members of the Waiting Time
12 Class are entitled to continuation of their wages, from the day their earned and unpaid wages were
13 due upon separation until paid, up to a maximum of 30 days.

14 **TENTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN** 16 **VIOLATION OF LABOR CODE SECTION 226**

17 **(By Plaintiff and the Wage Statement Class As Against all Defendants and Doe Defendants)**

18 132. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
19 by reference.

20 133. At all relevant times, Plaintiff and the members of the Wage Statement Class were
21 non-exempt employees of Defendants and covered by Labor Code §226.

22 134. Pursuant to Labor Code §226, subdivision (a), Plaintiff and members of the Wage
23 Statement Class were entitled to receive, semimonthly or at the time of each payment of wages, an
24 itemized wage statement accurately stating the following:

25 (1) gross wages earned, (2) total hours worked by the employee, except for any employee
26 whose compensation is solely based on a salary and who is exempt from payment of
27 overtime under subdivision (a) of Section 515 or any applicable order of the Industrial
28 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

1 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
2 paid, (7) the name of the employee and his or her social security number, except that by
3 January 1, 2008, only the last four digits of his or her social security number or an employee
4 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.

5
6 135. Defendants' illegal practices (as described herein above) resulted in Defendants not
7 providing Plaintiff and other California non-exempt employees with accurate and complete itemized
8 wage statements in violation of Labor Code §226. The wage statements Defendants provided to
9 employees were inadequate for reasons including but not limited to Defendants inaccurately or failing
10 to state the following: the number of hours worked, the gross wages earned, the net wages earned,
11 and hourly rates in place during the pay period with corresponding hours worked.

12 136. Defendants' failure to provide Plaintiff and members of the Wage Statement Class
13 with accurate and complete wage statements was knowing and intentional. Defendants had the ability
14 to provide Plaintiff and members of the Class with accurate and complete wage statements but
15 intentionally provided wage statements that Defendants knew were not accurate. Defendants
16 knowingly and intentionally put in place practices which deprived employees of wages and resulted
17 in Defendants' knowing and intentional providing of inaccurate wage statements.

18 137. As a result of Defendants unlawful conduct, Plaintiff and members of the Class have
19 suffered injury in that the wage statements inaccurately stated and/or failed to state the
20 aforementioned items of information and Plaintiff and the members of the class could not promptly
21 and easily determine from the wage statement alone an accurate statement of: the gross wages earned,
22 and the net wages earned.

23 138. Pursuant to Labor Code §226(e), Plaintiff and members of the Wage Statement Class
24 are entitled to recover actual damages or fifty dollars for the initial pay period in which a violation of
25 Labor Code §226 occurred and one-hundred dollars for each violation of Labor Code §226 in a
26 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

27 139. Pursuant to Labor Code §226(g), Plaintiff and members of the Wage Statement Class
28 are entitled to bring an action for injunctive relief to ensure Defendants' compliance with Labor Code

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

6 140. Pursuant to Labor Code §226(e) and 226(g), Plaintiff and members of the Class are
7 entitled to recover the full amount of penalties due under Labor Code §226(e), reasonable attorney
8 fees, and costs of suit.

9 **ELEVENTH CAUSE OF ACTION**

10 **UNFAIR BUSINESS PRACTICES, IN VIOLATION OF BUSINESS AND PROFESSIONS**

11 **CODE SECTION 17200, *et seq.***

12 **(By Plaintiff and the California Class As Against All Defendants and Doe Defendants)**

13 141. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
14 by reference.

15 142. The unlawful conduct of Defendants alleged herein constitutes unfair competition
16 within the meaning of California Business and Professions Code §17200. This unfair conduct includes
17 Defendants' use of policies and procedures which resulted in the following: failing to pay employees
18 at least the minimum wage rate for all hours which they worked; failure to pay overtime wages for
19 overtime hours worked; failing to pay overtime wages at the proper overtime rate of pay; failure to
20 provide all required meal periods or pay meal period premium wages; failure to authorize or permit,
21 or provide, all required rest periods or pay rest period premium wages; failure to pay accrued and
22 vested vacation/PTO wages; failure to provide proper sick pay; failure to indemnify all necessary
23 expenditures or losses incurred by employees in direct consequence of discharging their duties;
24 statutory penalties for failure to timely pay earned wages during employment; statutory waiting time
25 penalties in the form of continuation wages for failure to timely pay employees all wages due upon
26 separation of employment; statutory penalties for failure to provide accurate wage statements. Due
27 to their unfair and unlawful business practices in violation of the California Labor Code, Defendants
28 have gained a competitive advantage over other comparable companies doing business in the State of

1 California that comply with their obligations to pay employees for all hours worked, to provide meal
2 periods or pay meal period premium wages, to authorize or permit rest periods or pay rest period
3 premium wages, to provide vacation/PTO pay, to provide sick pay, to indemnify employees for
4 employment related losses and expenditures during the course of their employment, to timely pay
5 wages during employment, to timely pay all wages due upon separation of employment, and to
6 provide proper wage statements during the course of employment.

7 143. As a result of Defendants' unfair competition as alleged herein, Plaintiff and members
8 of the Minimum Wage Class, Overtime Class, Regular Rate Class, Meal Period Class, Meal Period
9 Premium Wages Class, Rest Period Class, Rest Period Premium Wages Class, Vacation Pay Class,
10 Sick Pay Class, Indemnification Class, Pay Day Class, Waiting Time Class, and Wage Statement
11 Class, have suffered injury in fact and lost money or property, as described in more detail above.

12 144. Pursuant to California Business and Professions Code §17203, Plaintiff and members
13 of the Minimum Wage Class, Overtime Class, Regular Rate Class, Meal Period Class, Meal Period
14 Premium Wages Class, Rest Period Class, Rest Period Premium Wages Class, Vacation Pay Class,
15 Sick Pay Class, Indemnification Class, Pay Day Class, Waiting Time Class, and Wage Statement
16 Class are entitled to restitution of all wages and other monies rightfully belonging to them that
17 Defendants failed to pay and wrongfully retained by means of their unlawful and unfair business
18 practices. Plaintiff also seeks an injunction against Defendants on behalf of the California Class
19 enjoining Defendants, and any and all persons acting in concert with them, from engaging in each of
20 the unlawful practices, policies and patterns set forth herein.

21 **TWELVTH CAUSE OF ACTION**

22 **CIVIL PENALTIES AND WAGES PURSUANT TO THE** 23 **PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.** 24 **(By Plaintiff as Against all Defendants and Doe Defendants)**

25 145. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
26 by reference.

27 146. During the period beginning one-year period preceding the sending of the initial notice
28 to the LWDA to the present, Defendants violated Labor Code §§201, 202, 203, 226, 226.7, 510, 512,

1194, 1197, and 1198 as alleged in more detail above.

147. Failure to Pay Wages for All Hours Worked at the Legal Minimum Wage:

Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees. Labor Code §§1194 and 1197 require an employer to compensate employees for all “hours worked” at least at a minimum wage rate of pay as established by the Industrial Welfare Commission (“IWC”) and the Wage Orders. This includes the time an employee spends, either directly or indirectly, performing services which inure to the benefit of the employer. Plaintiff and aggrieved employees worked more minutes per shift than Defendants credited them with having worked. This resulted in Plaintiff and aggrieved employees working time for which they were not compensated any wages, in violation of Labor Code §§1194, 1197, and the Wage Orders.

148. Failure to Pay Overtime Wages for Overtime Hours Work and/or Failure to the Proper Overtime Rate of Pay Due to Employers’ Failure to Include All Remuneration When Calculating the Regular Rate of Pay for Purposes of Paying Overtime Wages: Defendants employed many of their employees, including Plaintiff, as non-exempt, hourly employees. In California, an employer is required to pay hourly employees for all “hours worked,” which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services that inure to the benefit of the employer. Labor Code §§510 and 1194 require an employer to compensate employees a higher rate of pay for hours worked in excess of 8 hours in a workday, 40 hours in a workweek, and on any seventh consecutive day of work in a workweek. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 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. (Lab. Code §510.)

(a) Plaintiff maintains that when Defendant did pay overtime wages to Plaintiff

1 and other current and former aggrieved, California-based, hourly non-exempt employees, Defendant
2 failed to pay the overtime wages at the proper overtime rate of pay due to Defendants' failure to
3 include all remuneration when calculating the overtime rate of pay. Specifically, Defendants
4 maintained a policy, practice, and/or procedure that entirely excluded additional remuneration
5 Plaintiff and other current and former aggrieved, California-based, hourly non-exempt employees
6 earned including, but not limited to, "bonus" pay, when calculating Plaintiff's and other current and
7 former aggrieved, California-based, hourly non-exempt employees' regular rate of pay for the
8 purpose of paying overtime. As a result, Plaintiff is informed and believes that Defendants failed to
9 pay her and other current and former aggrieved, California-based, hourly non-exempt employees for
10 all overtime hours worked and failed to pay overtime wages at their proper overtime rate of pay.

11 149. **Failure to Authorize or Permit Meal Periods in Violation of Labor Code §512**
12 **and 226.7 and/or Failure to Pay Meal Period Premiums at the Proper Rate of Pay Due to**
13 **Employers' Failure to Include All Remuneration When Calculating the Regular Rate of Pay**
14 **for Purposes of Paying Meal Period Premiums:** California law requires an employer to authorize
15 or permit an employee an uninterrupted meal period of no less than 30-minutes in which the employee
16 is relieved of all duties and the employer relinquishes control over the employee's activities prior to
17 the employee's sixth hour of work. Cal. Lab. Code §§226.7, 512; Wage Order 9-2001, 11; *Brinker*
18 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
19 employee for a work period of more than 10 hours per day without providing the employee with a
20 second such meal period of not less than 30 minutes prior to the start of the eleventh hour of work.
21 *Id.* If the employee is not relieved of all duty during a meal period, the meal period shall be considered
22 an "on duty" meal period and counted as time worked. A paid "on duty" meal period is only permitted
23 when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the
24 parties have a written agreement agreeing to on duty meal periods. If an employer fails to provide an
25 employee a meal period in accordance with the law, the employer must pay the employee one hour
26 of pay at the employee's regular rate of pay for each workday that a legally required meal period was
27 not timely provided or was not duty-free. *Id.*

28 (a) During the four years prior to the filing of the complaint, Plaintiff and

1 aggrieved employees regularly worked shifts of more than 5 hours in length. Nevertheless, Plaintiff
2 and aggrieved employees were not given an uninterrupted 30-minute meal break for every five hours
3 of work because Defendants' systematic company policy pressured and/or required employees to
4 work without receiving meal periods, or the meal breaks were interrupted, untimely, taken while
5 working, and/or were shorter than 30 minutes. Nevertheless, Defendants automatically deducted 30
6 minutes from Plaintiff's and aggrieved employees' daily hours worked and attributed that time to a
7 first meal period. At times, Plaintiff and California non-exempt employees would work in excess of
8 10 hours which would entitled them to a second meal period before the 10th hour of work. Defendants
9 did not provide Plaintiff and California non-exempt employees with a second meal period when they
10 worked in excess of 10 hours. Defendants did not have a procedure in place to pay Plaintiff and
11 California non-exempt employees a premium wage for their missed meal periods when they did not
12 receive a second meal period. Accordingly, Defendants did not pay Plaintiff and California non-
13 exempt employees a premium wage when they did not receive a second meal period. Defendants also
14 failed to pay Plaintiff and aggrieved employees one hour of pay at their regular rate of pay for each
15 workday Plaintiff and aggrieved employees did not receive all legally compliant meal periods.
16 Defendants lacked a policy and procedure for compensating Plaintiff and aggrieved employees with
17 premium wages when they did not receive all legally required meal periods in a legally compliant
18 manner. These practices and procedures resulted in Plaintiff and all other aggrieved employees not
19 receiving wages to compensate them for workdays which Defendants did not provide them with
20 legally compliant meal periods in compliance with California law.

21 (b) Additionally, on occasions Defendants did pay Plaintiff and other current and
22 former aggrieved, California-based, hourly non-exempt employees a "premium" wage for late,
23 missed, short, or on-premise meal periods, Employers failed to pay it at one additional hour of pay at
24 Employee's and other current and former aggrieved, California-based, hourly non-exempt
25 employees' regular rate of compensation. Specifically, Defendants maintained a policy, practice,
26 and/or procedure that entirely excluded additional remuneration Plaintiff and other current and former
27 aggrieved, California-based, hourly non-exempt employees earned including, but not limited to,
28 "bonus" pay, when calculating Plaintiff's and other current and former aggrieved, California-based,

hourly non-exempt employees' regular rate of pay for the purpose of paying meal period premiums.

150. **Failure to Pay Hourly Employees Wages to Compensate Them for Workdays Defendants Failed to Provide Required Rest Periods:** Defendants often employed hourly employees, including the named Plaintiff and all others similarly-situated, for shifts at least three and one-half (3.5) hours in length. California law states 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. ... If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.” (Wage Orders, subd. 12; see Lab. Code §226.7.) Under California law, “[e]mployees 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 v. Superior Court* (2012) 53 Cal.4th 1004, 1029; Lab. Code §226.7; Wage Orders, subd. 12.) Rest periods must be in the middle of each work period. (Wage Orders, subd. 12.) If an employer fails to provide an employee a timely and legally compliant rest period, the employer must pay the employee one hour of pay at the employee’s regular rate of compensation for each work day that a legally required meal period was not provided or was not duty free. (*Id.*) Despite that California law requires employers to provide employees with one 10 minute rest break when an employee’s work shift is in excess of 3.5, a second 10 minute rest break when a shift is in excess of 6 hours, a third 10-minute rest break when a shift is in excess of 10 hours, Defendants regularly failed to do so. As a result, Plaintiff and aggrieved non-exempt, employees did not receive legally compliant rest periods as they were untimely, on-duty, or were not taken at all. Defendants also failed to pay employees one hour of pay at their regular rate of pay for each workday Plaintiff and employees did not receive all timely and legally compliant rest periods. This practice resulted in Plaintiff and all other aggrieved California non-exempt employees not receiving wages to compensate them for workdays which Defendants did not provide them with rest periods in compliance with California law.

1 **151. Failure to Indemnify Employees for Employment-Related Losses and Expenses**
2 **in Violation of Labor Code §2802:** Plaintiff maintains that Defendants failed to indemnify him and
3 other current and former aggrieved California-based non-exempt hourly employees for all necessary
4 expenditures or losses incurred by them in the discharge of their duties. Labor Code §2802(a)
5 requires, “An employer shall indemnify his or her employee for all necessary expenditures or losses
6 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
7 obedience to the directions of the employer....”

8 (a) Plaintiff maintains Defendants employed a policy, practice, and/or procedure
9 whereby Defendant required Plaintiff and other aggrieved employees to drive in and between work
10 locations, without ever reimbursing Plaintiff and other aggrieved employees for their gas mileage,
11 vehicle maintenance, insurance, and other expenses. Defendants employed policies and procedures
12 which ensured Plaintiff and other aggrieved employees would not receive indemnification for the
13 aforementioned necessary expenditures incurred as result of their employment with Defendants.
14 Defendants’ aforementioned policies, practices, and/or procedures resulted in Plaintiff and other
15 aggrieved employees not receiving indemnification for employment-related expenditures in
16 compliance with California law.

17 **152. Failure to Timely Pay Earned Wages During Employment:** In California, wages
18 must be paid at least twice during each calendar month on days designated in advance by the employer
19 as regular paydays, subject to some exceptions. Labor Code §204(a). Wages earned between the 1st
20 and 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of
21 that month and wages earned between the 16th and the last day, inclusive, of any calendar month
22 must be paid between the 1st and 10th day of the following month. *Id.* Other payroll periods such as
23 those that are weekly, biweekly, or semimonthly, must be paid within seven (7) calendar days
24 following the close of the payroll period in which wages were earned. Labor Code §204(d). Plaintiff
25 maintains that Defendants failed to timely pay Plaintiff and other aggrieved employees in violation
26 of Labor Code §204.

27 **153. Failure to Provide Sick Pay At The Regular Rate:** In California, sick pay must be
28 compensated at the employee’s regular rate of pay, for the workweek in which the paid leave was

1 taken, or at a rate determined by averaging total wages excluding overtime over 90-days. (Lab. Code
2 §246(1).) Plaintiff maintains that Defendants failed to pay Plaintiff and other current and former
3 aggrieved, California-based, hourly non-exempt employees, sick pay at the correct rate. In addition
4 to hourly wages, Plaintiff and other current and former aggrieved, California-based, hourly non-
5 exempt employees, received compensation in addition to hourly wages, including but not limited to,
6 “bonus” pay, but those additional amounts were not included when calculating sick pay wages. By
7 failing to pay Plaintiff and other current and former aggrieved, California-based, hourly non-exempt
8 employees, for sick pay at the correct rate, Defendants willfully violated Labor Code §246.

9 **154. Failure to Pay Accrued and Vested Vacation Wages:** Employers had a policy and/or
10 procedure of providing its employees, including Plaintiff and other current and former aggrieved
11 California-based non-exempt hourly employees, with paid vacation time and/or personal time off
12 (“Vacation/PTO”). Vacation/PTO wages are deferred wages that vest once accrued. California Labor
13 Code §227.3 provides that Defendants must pay its employees, including Plaintiff and others similarly
14 situated, all unused vested vacation/PTO at the time of termination at the employees’ final rate of pay.

15 **(a)** Plaintiff/Defendants had a vacation policy in which Plaintiff and other
16 similarly situated employees accrued vacation/PTO wages. However, Plaintiff maintains that
17 Defendants terminated Plaintiff and other similarly situated employees without paying them the full
18 amount of their earned vacation/PTO wages, in violation of California law, and employed policies
19 and procedures which ensured Plaintiff and those similarly situated would not receive their accrued
20 and vested vacation/PTO wages upon termination.

21 **155. Failure to Pay California Employees All Wages Due at Time of**
22 **Termination/Resignation:** An employer is required to pay all unpaid wages timely after an
23 employee’s employment ends. The wages are due immediately upon termination (Labor Code §201)
24 or within 72 hours of resignation (Labor Code §202). Because Defendants failed to pay Plaintiff and
25 aggrieved employees all their earned wages (including minimum wages, overtime wages, unpaid meal
26 and rest period premium wages, and reimbursement expenses), Defendants failed to pay those
27 employees timely after each employee’s termination and/or resignation.

28 **156. Pay Stub Violations:** Labor Code §226(a) provides (inter alia) that, upon paying an

1 employee his or her wages, the employer must “furnish each of his or her employees ... an itemized
2 statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, except
3 for any employee whose compensation is solely based on a salary and who is exempt from payment
4 of overtime under subdivision (a) of §515 or any applicable order of the Industrial Welfare
5 Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee
6 is paid on a piece-rate basis, (4) all deductions, provided, that all deductions made on written orders
7 of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
8 dates of the pay period for which the employee is paid, (7) the name of the employee and his or her
9 social security number, (8) the name and address of the legal entity that is the employer, and (9) all
10 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
11 at each hourly rate by the employee.” Defendants failed to provide accurate and complete wage
12 statements to Plaintiff and aggrieved employees. Defendants provided to employees wage statements
13 which were inadequate as a result of the aforementioned conduct (i.e., failure to pay all minimum
14 wage and overtime for all hours worked and failure to pay meal and rest period premiums), the wage
15 statements inaccurately stated: the gross wages earned, total hours worked by the employee, the net
16 wages earned, and applicable hourly rates in effect in a pay period with corresponding number of
17 hours worked. Defendants applied these policies and procedures to Plaintiff and other aggrieved
18 employees which resulted in Defendants failing to provide complete and accurate wage statements to
19 non-exempt employees in compliance with Labor Code §226, subdivision (a).

20 157. Labor Code §2699, subdivisions (a) and (g) authorize an aggrieved employee, on
21 behalf of herself or herself and other current or former employees, to bring a civil action to recover
22 civil penalties against all Defendants pursuant to the procedures specified in Labor Code §2699.3.

23 158. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
24 §2699.3. Plaintiff filed notice with the Labor and Workforce Development Agency ("LWDA") on
25 March 21, 2023, and provided notice to Defendants by certified mail which provided notice of the
26 specific provisions of the Labor Code alleged to have been violated, including the facts and theories
27 to support the alleged violations.

28 159. Pursuant to Labor Code §2699.3, the LWDA must give written notice by certified mail

1 to the parties that it intends to investigate the alleged violations of the Labor Code within 65 days of
2 the date of the complainant's written notice and/or Defendants may attempt to cure for certain
3 violations. The LWDA failed to provide the parties notice within 65 days of the date of Plaintiff's
4 letter that the LWDA intends to investigate Plaintiff's claims and/or Defendants failed to cure any of
5 the alleged violations which could have been cured.

6 160. Pursuant to Labor Code §2699(a) and (f), Plaintiff seeks, within the one year prior to
7 the mailing of the LWDA letter, civil penalties for Defendants' violations of Labor Code 201, 202,
8 203, 226, 226.7, 510, 512, 1194, 1197, and 1198, in the following amounts:

9 a. For violations of Labor Code §§201, 202, 203, 226.7, 1197, and 1198; one
10 hundred dollars (\$100) for each employee per pay period for the initial violation and two hundred
11 dollars (\$200) for each employee per pay period for each subsequent violation [penalty amounts
12 established by Labor Code §2699(f)(2)].

13 b. For violations of Labor Code §226, subd. (a), two hundred fifty dollars (\$250)
14 for each employee for each pay period for the initial violation, and for each subsequent violation, one
15 thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
16 established by Labor Code §226.3].

17 c. For violations of Labor Code §226, subd. (a), seven hundred fifty dollars
18 (\$750) for each employee [penalty amounts established by Labor Code §226, subd. (f)]

19 d. For violations of Labor Code §§510, 512, and 1194, fifty dollars (\$50) for each
20 employee for each pay period for the initial violation, and for each subsequent violation, one hundred
21 dollars (\$100) for each underpaid employee for each pay period [penalty amounts established by
22 Labor Code §558]

23 161. Pursuant to Labor Code §2699(g), Plaintiff is entitled to an award of reasonable
24 attorney's fees and costs in connection with her claims for civil penalties.

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE, PLAINTIFF ON HER OWN BEHALF AND ON BEHALF OF THOSE**
3 **SIMILARLY-SITUATED, PRAYS AS FOLLOWS:**

4 **ON ALL CAUSES OF ACTION:**

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

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

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

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

14 **ON THE FIRST CAUSE OF ACTION:**

15 1. That Defendants be found to have violated the minimum wage provisions of the
16 California Labor Code and the IWC Wage Order as to Plaintiff and the Minimum Wage Class;

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

19 3. For any and all legally applicable penalties;

20 4. For liquidated damages pursuant to California Labor Code §1194.2;

21 5. For pre-judgment interest, including but not limited to that recoverable under
22 California Labor Code §1194, and post-judgment interest;

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

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

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

1 **ON THE FIRST CAUSE OF ACTION:**

2 1. That Defendants be found to have violated the overtime provisions of the Labor Code
3 and the IWC Wage Order as to Plaintiff and the Overtime Class;

4 2. For damages, according to proof, including but not limited to unpaid wages;

5 3. For any and all legally applicable penalties;

6 4. For pre-judgment interest, including but not limited to that recoverable under Labor
7 Code §1194, and post-judgment interest;

8 5. For attorneys' fees and costs of suit, including but not limited to that recoverable under
9 Labor Code §1194; and

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

12 **ON THE THIRD CAUSE OF ACTION:**

13 1. That Defendants be found to have violated the meal period provisions of the Labor
14 Code and the IWC Wage Order as to Plaintiff, the Meal Period Class, and the Meal Period Premium
15 Wages Class;

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

17 3. For any and all legally applicable penalties;

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

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

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

23 1. That Defendants be found to have violated the rest period provisions of the Labor Code
24 and the IWC Wage Order as to Plaintiff, the Rest Period Class, and the Rest Period Premium Wages
25 Class;

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

27 3. For any and all legally applicable penalties;

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

Code §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 Defendants be found to have violated the vested vacation/PTO wages provisions of the California Labor Code as to Plaintiff and the Vacation Pay Class;

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

3. For any and all legally applicable penalties;

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

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

ON THE SIXTH CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code regarding correct payment of sick pay to Plaintiff and the Sick Pay Class;

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

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

ON THE SEVENTH CAUSE OF ACTION:

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

2. For damages, according to proof, including unpaid use and/or costs of necessary tools and/or resources;

3. For any and all legally applicable penalties;

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

5. For attorneys' fees and costs of suit, including but not limited to that recoverable under

1 Labor Code §2802; and

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

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

5 1. That Defendants be found to have violated Labor Code 204 as to Plaintiff and the Pay
6 Day Class;

7 2. For damages, according to proof;

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

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

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

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

15 1. That Defendants be found to have violated the provisions of the California Labor Code
16 regarding payment of all unpaid wages due upon resignation or termination as to the Waiting Time
17 Class;

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

20 3. For pre-judgment interest, including under California Labor Code §218.6, and post-
21 judgment interest; and,

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

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

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

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

- 1 3. For pre-judgment interest and post-judgment interest; and,
- 2 4. For attorneys' fees and costs of suit, including but not limited to that recoverable under
- 3 California Labor Code §226(e); and,
- 4 5. For such and other further relief, in law and/or equity, as the Court deems just or
- 5 appropriate.

6 **ON THE ELEVENTH CAUSE OF ACTION:**

- 7 1. That Defendants be found to have violated California Business and Professions Code
- 8 §17200, *et seq.*, for the conduct alleged herein as to all Classes;
- 9 2. A declaratory judgment that the practices complained herein are unlawful;
- 10 3. An injunction against Defendants enjoining them, and any and all persons acting in
- 11 concert with them, from engaging in each of the unlawful practices, policies and patterns set forth
- 12 herein;
- 13 4. For restitution to the full extent permitted by law; and,
- 14 5. For such and other further relief, in law and/or equity, as the Court deems just or
- 15 appropriate.

16 **ON THE TWELVTH CAUSE OF ACTION**

- 17 1. That the Defendants be found to have violated the provisions of the Labor Code and
- 18 the IWC Wages Orders as to the Plaintiff and current and former employees;
- 19 2. For all civil penalties authorized by Labor Code §2698, *et seq.*;
- 20
- 21 3. For civil penalties under Labor Code §226.3 in the amount two hundred fifty dollars
- 22 (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
- 23 employee for each subsequent violation;
- 24 4. For civil penalties under Labor Code §2699(f), for Labor Code violations without a
- 25 specific civil penalty, in the amount of one hundred dollars (\$100) for each aggrieved employee per
- 26 pay period for each initial violation and two hundred dollars (\$200) for each aggrieved employee per
- 27 pay period for each subsequent violation;
- 28

1 5. For civil penalties under Labor Code §558, as follows: (1) for an initial violation, fifty
2 dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid;
3 (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each
4 pay period for which the employee was underpaid;

5 6. For any and all legally applicable penalties during the relevant statute of limitations
6 subject to any permissible tolling, including but not limited to that recoverable under Labor Code,
7 including but not limited to §§2699(f), 201, 202, 203, 204, 226, 226.7, 227.3, 246, 2802, 510, 512,
8 1194, 1197, and 1198;

9 7. For attorneys' fees and costs of suit, including but not limited to that recoverable under
10 Labor Code §2699(g);

11 8. For pre-judgment and post-judgment interest as provided by law; and

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

14
15 Dated: December 12, 2023

Respectfully submitted,
E&L, LLP

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18 

19 By: _____

20 David Lavi, Esq.
21 Arie Ebrahimian, Esq.
22 Attorneys for PLAINTIFF PAOLA PADILLA
23 on behalf of herself and others similarly situated
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DEMAND FOR JURY TRIAL

PLAINTIFF PAOLA PADILLA demands a trial by jury for herself and the California Class on all claims so triable.

Dated: December 12, 2023

Respectfully submitted,
E&L, LLP



By: _____

David Lavi, Esq.
Arie Ebrahimian, Esq.
Attorneys for PLAINTIFF PAOLA PADILLA
on behalf of herself and others similarly situated