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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

GEROSKA GAY, PATRICIA YOUNG,  
PHILIP JACKSON, and VANESSA  
MARTINEZ, on behalf of himself and others  
similarly situated,

Plaintiff,

vs.

PREMIUM RETAIL SERVICES, LLC, an  
entity of unknown form; and DOES 1 through  
50, inclusive,

Defendants.

Case No. C23-02216

CLASS ACTION

Assigned for All Purposes To:

Hon. Edward Weil

Dept.: 12

**FIRST AMENDED CLASS AND  
REPRESENTATIVE ACTION  
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Failure to Pay Vacation Wages;
6. Failure to Comply with Labor Code § 245 *et seq.* and 246;
7. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
8. Failure to Comply with Labor Code § 2751;
9. Violation of Labor Code § 226(a);
10. Violation of Labor Code § 221;
11. Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5;
12. Penalties Pursuant to Labor Code § 203;
13. Violation of Labor Code § 204;
14. Violation of Business & Professions Code § 17200 *et seq.*; and
15. Penalties Pursuant to Labor Code § 2699, *et seq.*

**DEMAND FOR JURY TRIAL**

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20 Attorneys for Plaintiff VANESSA MARTINEZ

Plaintiffs GEROSKA GAY, PATRICIA YOUNG, PHILLIP JACKSON, and VANESSA MARTINEZ, (hereinafter “Plaintiffs”) on behalf of themselves and all others similarly situated (collectively, “Employees”; individually, “Employee”) complaints of Defendants, and each of them, as follows:

## INTRODUCTION

1. Plaintiffs bring this action on behalf of themselves and all current and former Employees within the State of California who, at any time between June 13, 2022 to September 26, 2024 are or were employed as non-exempt, hourly employees by Defendants PREMIUM RETAIL SERVICES, LLC, an entity of unknown form, and DOES 1 through 50 (all defendants being collectively referred to herein as “Defendants”). Plaintiffs allege that Defendants, and each of them, violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC) and California Business & Professions Code, and seeks redress therefore.

2. Plaintiffs are residents of California and during the time period relevant to this Complaint were employed by Defendants as non-exempt hourly employees within the State of California at Defendants' facilities and offices in California. Plaintiffs and the other Class members worked for Defendants in Contra Costa County, and in other nonexempt positions, throughout California and, and consistently worked at Defendants' behest without being paid all wages due. More specifically, Plaintiffs and the other similarly situated Class members were employed by Defendants and worked at Defendants' offices and other facilities where the conduct giving rise to the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiffs were employed by Defendants and (1) shared similar job duties and responsibilities, (2) was subjected to the same policies and practices, and (3) endured similar violations at the hands of Defendants as the other Employee Class members who served in similar and related positions.

3. Defendants required Plaintiffs and the Employees in the Class to perform work while remaining under Defendants' control during their meal breaks. Defendants thus failed to pay Plaintiffs and the Class members for all hours worked, and provided them with inaccurate wage statements that prevented Plaintiffs and the Class from learning of these unlawful pay practices. Defendants also failed to provide Plaintiffs and the Class with lawful meal and rest periods, as

employees were not provided with the opportunity to take timely, uninterrupted, and duty-free meal and rest periods as required by the Labor Code.

### **THE PARTIES**

#### **A. The Plaintiffs**

4. Plaintiff GEROSKA GAY has resided in California and during the time period relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within the State of California.

5. Plaintiff PATRICIA YOUNG has resided in California and was employed by Defendants as a retail merchandiser in the State of California as a non-exempt, hourly employee during the time period relevant to this Complaint.

6. Plaintiff PHILLIP JACKSON has resided in California and was employed by Defendants as a retail merchandiser in the State of California as a non-exempt, hourly employee California from approximately October 2021 to August 2023.

7. Plaintiff VANESSA MARTINEZ has resided in California and was employed by Defendants in the State of California as a non-exempt employee from approximately May of 2023 through approximately June of 2023, with duties that included, but were not limited to, customer service and technology sales.

#### **B. The Defendants**

8. Defendant PREMIUM RETAIL SERVICES, LLC (“PRS”) is a corporation with its principle executive office in Jacksonville, Florida. PRS is frequently known as Premium Retail Services, Inc., which has been listed as the employer on the wage statements issued to Plaintiff during the relevant time period. PRS does not list a California address with the California Secretary of State, but upon information and belief, employs Plaintiffs and the Aggrieved Employees in Contra Costa County, including at Defendants’ offices and facilities in Martinez, California, and throughout California and conducts business throughout California.

9. The true names and capacities, whether individual, corporate, associate, or whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to Plaintiffs, who therefore sue these Defendants by such fictitious names under Code of Civil

1 Procedure § 474. Plaintiffs are informed and believe and thereon allege that Defendants designated  
2 herein as Does 1 through 50, inclusive, and each of them, are legally responsible in some manner  
3 for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint  
4 to reflect the true names and capacities of the Defendants designated herein as Does 1 through 50  
5 when their identities become known.

6 10. Plaintiffs are informed and believe and thereon allege that each Defendant acted in  
7 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out  
8 a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each  
9 Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all  
10 respects as the employers or joint employers of Employees. Defendants, and each of them, exercised  
11 control over the wages, hours or working conditions of Employees, or suffered or permitted  
12 Employees to work, or engaged, thereby creating a common law employment relationship, with  
13 Employees. Therefore, Defendants, and each of them, employed or jointly employed Employees.

#### 14 JURISDICTION AND VENUE

15 11. This Court has jurisdiction over this Action pursuant to California Code of Civil  
16 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as  
17 a Class Action on behalf of similarly situated Employees of Defendants pursuant to California Code  
18 of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to  
19 California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and  
20 liabilities giving rise to this lawsuit occurred at least in part in Contra Costa County and Defendants  
21 maintain and operate company offices and facilities in Contra Costa County and employ Plaintiffs  
22 and other Class members in Contra Costa County and throughout California.

#### 23 FACTUAL BACKGROUND

24 12. The proposed class members and aggrieved employees, including Plaintiffs, are  
25 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire  
26 Employees who work in nonexempt positions at the direction of Defendants in the State of  
27 California. Defendants provide retail merchandising, strategy, support, and advocacy solutions to  
28 retailers nationwide. Plaintiffs and Class Members performed merchandising services for

1 Defendants' clients, including receiving, sorting, and preparing point-of-purchase ("POP") display  
2 materials for each assignment, traveling to assigned stores, auditing and stocking product, building  
3 product displays, updating product pricing and signage, and performing regular product "resets."

4 13. Plaintiffs and the Class members were either not paid by Defendants for all hours  
5 worked or were not paid at the appropriate minimum, regular, and overtime rates. Specifically, the  
6 uncompensated time included the time Employees worked off-the-clock traveling between jobsites,  
7 mapping out assignments and preparing all necessary POP signage and displays, and during meal  
8 periods. Plaintiffs also contend that Defendants failed to pay Plaintiffs and the Class members all  
9 wages due and owing, failed to provide meal and rest breaks, and failed to furnish accurate wage  
10 statements, all in violation of various provisions of the California Labor Code and applicable Wage  
11 Orders. Additionally, Defendants paid Plaintiffs and Employees nondiscretionary commissions,  
12 incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants  
13 failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay,  
14 and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of  
15 calculating the overtime wage rate. Therefore, during times when Plaintiffs and Employees worked  
16 overtime and received nondiscretionary commissions, incentive pay, and/or nondiscretionary  
17 bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

18 14. From at least four (4) years prior to the filing of this lawsuit and continuing to the  
19 present, Defendants paid Plaintiffs and Employees nondiscretionary commissions, incentive pay,  
20 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to  
21 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or  
22 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating  
23 sick pay. Therefore, during times when Plaintiffs and Employees worked overtime and received  
24 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed  
25 to pay all sick pay by paying a lower overtime rate than required.

26 15. From at least four (4) years prior to the filing of this lawsuit and continuing to the  
27 present, Defendants paid Plaintiffs and Employees nondiscretionary commissions, incentive pay,  
28 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to

1 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or  
2 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating  
3 vacation pay. Therefore, during times when Plaintiffs and Employees worked overtime and received  
4 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed  
5 to pay all vacation pay by paying a lower overtime rate than required. In addition, Defendants failed  
6 to pay all unused, vested vacation time upon termination.

7 16. During the course of Plaintiffs and the Class members' employment with  
8 Defendants, they were not paid all wages they were owed, including for all work performed and  
9 for all overtime hours worked and were forced to work during their meal and rest breaks to keep  
10 labor budgets low.

11 17. As a matter of uniform Company policy, Plaintiffs and the Class members were  
12 required to work during their meal and rest breaks which were not compensated by Defendants in  
13 violation of the California Labor Code. Plaintiffs and the Class members were also not paid regular  
14 wages and overtime for the time they were required to comply with other requirements imposed  
15 upon them, which they had to complete while working through their meal and rest breaks and  
16 without compensation. As a result, Plaintiffs and the Class members worked shifts over eight (8)  
17 hours in a day and over forty (40) hours in a work week, but they were not paid at the appropriate  
18 overtime rate for all such hours, including by being required to perform work duties and tasks  
19 without pay and while off-the-clock. As a result, Plaintiffs and the Class members worked  
20 substantial overtime hours during their employment with Defendants for which they were not  
21 compensated, in violation of the California Labor Code, applicable IWC Wage Orders.

22 18. As a result of the above described the daily work demands and pressures to work  
23 through breaks, and the other wage violations they endured at Defendants' hands, Plaintiffs and the  
24 Class members were not properly paid for all wages earned and for all wages owed to them by  
25 Defendants, including when working more than eight (8) hours in any given day and/or more than  
26 forty (40) hours in any given week. As a result of Defendants' unlawful policies and practices,  
27 Plaintiffs and Class members incurred overtime hours worked for which they were not adequately  
28 and completely compensated. To the extent applicable, Defendants also failed to pay Plaintiffs and

1 the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the  
2 seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular  
3 rate for hours worked over eight (8) on the seventh consecutive work day, as required under the  
4 Labor Code, applicable IWC Wage Orders.

5 19. Therefore, from at least four (4) years prior to the filing of this lawsuit and continuing  
6 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all  
7 hours worked and failing to pay minimum wage for all time worked as required by California Law.

8 20. Additionally from at least four (4) years prior to the filing of this lawsuit and  
9 continuing to the present, Defendants had a consistent policy or practice of failing to pay Employees  
10 overtime compensation at premium overtime rates for all hours worked in excess of eight (8) hours  
11 a day and/or forty (40) hours a week, and double-time rates for all hours worked in excess of twelve  
12 (12) hours a day, in violation of Labor Code § 510 and the corresponding sections of IWC Wage  
13 Orders.

14 21. Additionally from at least four (4) years prior to the filing of this lawsuit and  
15 continuing to the present, Defendants have regularly required Employees to work shifts in excess of  
16 five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30)  
17 minutes and shifts in excess of ten (10) hours without providing them with second meal periods of  
18 not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one hour of  
19 wages at each Employee’s effective regular rate of pay, for each meal period that Defendants failed  
20 to provide or deficiently provided.

21 22. From at least four (4) years prior to the filing of this lawsuit and continuing to the  
22 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less  
23 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did  
24 Defendants pay Employees premium pay for each day on which requisite rest breaks were not  
25 provided or were deficiently provided at one hour of wages at each Employee’s effective regular  
26 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

27 23. Additionally, from at least four (4) years prior to the filing of this lawsuit, and  
28 continuing to the present, Defendants have consistently failed to provide Employees with timely,

1 accurate, and itemized wage statements as required by California wage-and-hour laws. Specifically,  
2 Defendants failed in their affirmative obligation to keep accurate records of the correct overtime  
3 wages based on proper regular rate calculations that included nondiscretionary commissions,  
4 incentive pay, and/or nondiscretionary bonuses earned, and the total amount of compensation of  
5 their Employees. Moreover, the wage statements given to Employees by Defendants failed to  
6 accurately account for wages, overtime, and premium pay for deficient meal periods and rest breaks  
7 all of which Defendants knew or reasonably should have known were owed to Employees, as alleged  
8 hereinabove. The wage statements provided to Employees were confusing and required Employees  
9 to engage in discovery and refer to outside sources to verify whether their pay was correct and  
10 potentially resulting in a miscalculation by the Employees.

11 24. Additionally, from at least four (4) years prior to the filing of this lawsuit, and  
12 continuing to the present, Defendants have consistently failed to provide Employees with timely,  
13 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

14 25. From at least four (4) years prior to the filing of this lawsuit and continuing to the  
15 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the  
16 performance of their job duties for Defendants including, but not limited to, the cost of mileage  
17 and/or gas, the cost of personal cellphone usage, the cost of internet usage, and the cost of uniform  
18 cleaning which were necessary to perform their duties under Defendants' employ in violation of  
19 Labor Code § 2802.

20 26. From at least four (4) years prior to the filing of this lawsuit and continuing to the  
21 present, Defendants had a consistent and uniform policy, practice and procedure, when entering into  
22 contracts of employment with aggrieved employees for services to be rendered within California  
23 and the contemplated method of payment involved commissions, of failing to utilize a written  
24 contract signed by both the employer and employee setting forth the method by which the  
25 commissions shall be computed and paid in violation of Labor Code § 2751.

26 27. From at least four (4) years prior to the filing of this lawsuit and continuing to the  
27 present, Defendants have consistently and unlawfully collected or received wages from Employees.  
28 Defendants made payments of wages to Employees via direct deposit into their personal bank

accounts. However, Defendants unlawfully removed and made deductions of said wages from the bank accounts of Employees without permission and authorization.

28. Additionally, from at least three (3) years prior to the filing of this lawsuit, and continuing to the present, Defendants have consistently failed to keep accurate time and wage records as required by California wage-and-hour laws.

29. Additionally, from at least four (4) years prior to filing this lawsuit and continuing to the present, Defendants have had a consistent policy of failing to pay all wages owed to Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.

30. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor Code §§ 200, 201, 202, 203, 204, 221, 226, 226.4, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1199, 2698, 2699, *et seq.*, 2751, and 2802.

31. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code.

### CLASS ALLEGATIONS

32. Plaintiffs bring this class action on behalf of themselves and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiffs seek to represent a class defined as follows: all current and former non-exempt individuals employed by Defendants, at any time within four (4) years of the filing of this lawsuit and have been employed by Defendants within the State of California.

33. Further, Plaintiffs seek to represent the following Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

1 c. Subclass 3. Vacation Wages Subclass. All Class members who were not  
2 compensated at the Employee's regular rate of pay for their vacation wages.

3 d. Subclass 4. Sick Pay Subclass. All Class members who were not compensated at the  
4 Employee's regular rate of pay for their sick pay wages.

5 e. Subclass 5. Meal Period Subclass. All Class members who were subject to  
6 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-  
7 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

8 f. Subclass 6. Rest Break Subclass. All Class members who were subject to  
9 Defendants' policy and/or practice of failing to authorize and permit Employees to take  
10 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction  
11 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

12 g. Subclass 7. Payroll Records Subclass. All Class members who were subject to  
13 Defendants' policy and/or practice of failing to keep accurate time and wage records as required by  
14 California wage-and-hour laws.

15 h. Subclass 8. Commission Subclass. All Class members who, within the applicable  
16 limitations period, were not provided with a written contract signed by both the employer and  
17 employee setting forth the method by which the commissions shall be computed and paid.

18 i. Subclass 9. Wage Statement Subclass. All Class members who, within the applicable  
19 limitations period, were not provided with accurate itemized wage statements.

20 j. Subclass 10. Unauthorized Deductions from Wages Subclass. All Class members  
21 who were subject to Defendants' policy and/or practice of automatically deducting wages from  
22 Employees' bank accounts.

23 k. Subclass 11. Failure to Reimburse for Necessary Business Expenditures. All Class  
24 members who were subject to Defendants failing to reimburse for expenses necessarily incurred in  
25 the performance of Employees job duties for Defendants which were necessary to perform their  
26 duties under Defendants' employ.

27 l. Subclass 12. Termination Pay Subclass. All Class members who, within the  
28 applicable limitations period, either voluntarily or involuntarily separated from their employment

1 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon  
2 termination.

3 m. Subclass 13. Failure to Timely Pay Wages Subclass. All Class Members who were  
4 subject to Defendants' policy and/or practice of not timely paying all wages earned when they were  
5 due and payable within seven calendar days from the end of the pay period.

6 n. Subclass 14. UCL Subclass. All Class members who are owed restitution as a  
7 result of Defendants' business acts and practices, to the extent such acts and practices are found to  
8 be unlawful, deceptive, and/or unfair.

9 34. Plaintiffs reserve the right under California Rule of Court 3.765 to amend or modify  
10 the class description with greater particularity or further division into subclasses or limitation to  
11 particular issues.

12 35. This action has been brought and may properly be maintained as a class action under  
13 the provisions of Code of Civil Procedure § 382 because there is a well-defined community of  
14 interest in litigation and proposed class is easily ascertainable.

15 **A. Numerosity**

16 36. The potential members of the class as defined are so numerous that joinder of all the  
17 member of the class is impracticable. While the precise number of class member has not been  
18 determined at this time, Plaintiffs are informed and believe that Defendants employ or, during the  
19 time period relevant to this lawsuit, employed more than 1,000 individuals were employed by  
20 Defendant's within the State of California.

21 37. Accounting for employee turnover during the relevant time period increases this  
22 number substantially. Plaintiffs allege that Defendants' employment records will provide  
23 information as to the number and location of all class members.

24 **B. Commonality**

25 38. There are questions of law and fact common to the class that predominate over any  
26 questions affecting only individual class members. These common questions of law and fact include:

- 27 a. Whether Defendants failed to pay Employees minimum wages;  
28 b. Whether Defendants failed to pay Employees wages for all hours worked;

- 1 c. Whether Defendants failed to pay Employees overtime as required under Labor Code  
2 § 510;
- 3 d. Whether Defendants failed to pay Employees vacation wages as required under  
4 Labor Code § 227.3;
- 5 e. Whether Defendants failed to pay Employees sick pay as required under Labor Code  
6 § 245;
- 7 f. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC  
8 Wage Orders, by failing to provide Employees with requisite meal periods or  
9 premium pay in lieu thereof;
- 10 g. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage  
11 Orders, by failing to provide Employees with requisite rest breaks or premium pay  
12 in lieu thereof;
- 13 h. Whether Defendants violated Labor Code § 2751;
- 14 i. Whether Defendants violated Labor Code § 226(a);
- 15 j. Whether Defendants violated Labor Code § 221;
- 16 k. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 17 l. Whether Defendants failed to reimburse Employees for necessary business expenses;
- 18 m. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay  
19 wages and compensation due and owing at the time of termination of employment;
- 20 n. Whether Defendants violated Labor Code § 204 by failing to timely pay wages;
- 21 o. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*;
- 22 p. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 23 q. Whether Employees are entitled to equitable relief pursuant to Business and  
24 Professions Code § 17200 *et seq.*

25 **C. Typicality**

26 39. The claims of the named plaintiffs are typical of those of the other Employees.  
27 Employees all sustained injuries and damages arising out of and caused by Defendants' common  
28 course of conducts in violation of statutes, as well as regulations that have the force and effect of

law, as alleged herein.

**D. Adequacy of Representation**

40. Plaintiffs will fairly and adequately represent and protect the interest of Employees. Counsel who represents Employees are experienced and competent in litigating employment class actions.

**E. Superiority of Class Action**

41. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only individual Employees. Each Employee has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

42. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware of any difficulties in managing this case that should preclude class action.

**FIRST CAUSE OF ACTION**

**FAILURE TO PAY MINIMUM WAGES**

**(Against All Defendants)**

43. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

44. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of misstating Employees time records and failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with working during meal breaks. Additionally, Defendants had a consistent policy of failing to pay Employees for hours worked during alleged meal periods for which Employees were consistently denied, as also addressed herein. Employees also performed work off the clock by driving between jobsites during their workdays. Defendant also required Plaintiffs and Class Members to map out their work assignments and sort and prepare all necessary POP signage and displays prior to clocking in for work each day. Moreover, Defendants did not

1 pay Plaintiffs and Employees at the applicable minimum wage for all hours worked. Defendants'  
2 uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to  
3 the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate  
4 compensation to Plaintiffs and the other members of the Class as to minimum wage pay.

5 45. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:

6 The minimum wage for employees fixed by the commission is the  
7 minimum wage to be paid to employees, and the payment of a less  
8 wage than the minimum so fixed is unlawful.

8 46. The applicable minimum wages fixed by the commission for work during the  
9 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are therefore  
10 entitled to double the minimum wage during the relevant period.

11 47. The minimum wage provisions of California Labor Code are enforceable by private  
12 civil action pursuant to California Labor Code § 1194(a) which states:

13 Notwithstanding any agreement to work for a lesser wage, any  
14 employee receiving less than the legal minimum wage or the legal  
15 overtime compensation applicable to the employee is entitled to  
16 recover in a civil action the unpaid balance of the full amount of this  
17 minimum wage or overtime compensation, including interest  
18 thereon, reasonable attorney's fees and costs of suit.

17 48. As described in California Labor Code §§ 1185 and 1194.2, any action for wages  
18 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

19 49. California Labor Code § 1194.2 also provides for the following remedies:

20 In any action under Section 1194 . . . to recover wages because of  
21 the payment of a wage less than the minimum wages fixed by an  
22 order of the commission, an employee shall be entitled to recover  
23 liquidated damages in an amount equal to the wages unlawfully  
24 unpaid and interest thereon.

23 50. Defendants have the ability to pay minimum wages for all time worked and have  
24 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this  
25 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

26 51. Wherefore, Employees are entitled to recover the unpaid minimum wages (including  
27 double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully  
28

unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a).

## **SECOND CAUSE OF ACTION**

### **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

#### **(Against All Defendants)**

52. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

53. By their conduct, as set forth herein, Defendants violated California Labor Code § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked including time worked off-the-clock driving between jobsites, mapping out assignments and preparing POP signage and displays, and time spent working during meal periods. Employees regularly worked over 8 hours on a given day without receiving overtime compensation.

54. Furthermore, on information and belief, Defendants did not pay Plaintiffs and Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Plaintiffs and Employees nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate.

55. Therefore, during times when Plaintiffs and Employees worked overtime and received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

56. Defendants' failure to pay compensation in a timely fashion also constituted a violation of California Labor Code § 204, which requires that all wages shall be paid semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct violation of that provision of the California Labor Code, Defendants have failed to pay all wages and overtime compensation earned by Employees. Each such failure to make a timely payment of compensation to Employees constitutes a separate violation of California Labor Code § 204.

57. Employees have been damaged by these violations of California Labor Code §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

58. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs.

### THIRD CAUSE OF ACTION

## MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7

**(Against All Defendants)**

59. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

60. Employees regularly worked shifts greater than five (5) hours and greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of more than five (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second meal period of not less than thirty (30) minutes.

61. Defendants failed to provide Employees with meal periods as required under the Labor Code. Employees were consistently required to work through their meal periods which they were consistently denied. Employees were also required to take meal periods after working well beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal period as required by law.

1           62.     Moreover, Defendants failed to compensate Employees for each meal period not  
2 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and 20  
3 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee  
4 a meal period in accordance with this section, the employer shall pay the employee one hour of pay  
5 at the employee's regular rate of compensation for each workday that the meal period is not  
6 provided. Defendants failed to compensate the Employees in the Class for each meal period not  
7 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and 20  
8 of the applicable IWC Wage Order. Additionally, as detailed above, when Defendants did pay meal  
9 period premiums, they did so at the normal regular rate of pay without factoring in all forms or  
10 remuneration/compensation or by otherwise incorrectly calculating the regular rate.

11           63.     Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in an  
12 amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not  
13 provided or deficiently provided, a sum to be proven at trial.

14                                   **FOURTH CAUSE OF ACTION**

15                                   **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

16                                   **(Against All Defendants)**

17           64.     Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in  
18 full herein.

19           65.     Employees consistently worked consecutive four (4) hour shifts. Pursuant to the  
20 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of  
21 not less than ten (10) minutes for each consecutive four (4) hour shift.

22           66.     Defendants failed to provide Employees with timely, duty-free uninterrupted rest  
23 breaks of not less than ten (10) minutes for each consecutive four (4) hour shift.

24           67.     Moreover, Defendants failed to compensate Employees for each rest period not  
25 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC  
26 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in  
27 accordance with this section, the employer shall pay the employee one hour of pay at the employee's  
28 regular rate of compensation for each workday that the rest period is not provided. Defendants failed

1 to compensate the Employees in the Class for each rest period not provided or inadequately  
2 provided, as required under Labor Code § 226.7 and the applicable IWC Wage Order. Additionally,  
3 as detailed above, when Defendants did pay rest period premiums, they did so at the normal regular  
4 rate of pay without factoring in all forms or remuneration/compensation or by otherwise incorrectly  
5 calculating the regular rate.

6 68. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in an  
7 amount equal to one (1) hour of wages at their effective hourly rates of pay for each day worked  
8 without the required rest breaks, a sum to be proven at trial.

9 **FIFTH CAUSE OF ACTION**  
10 **FAILURE TO PAY VACATION WAGES**  
11 **(Against All Defendants)**

12 69. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in  
13 full herein.

14 70. Pursuant to California Labor Code § 227.3, whenever a contract of employment or  
15 employment policy provides for paid vacation and an employee is terminated without having taken  
16 off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in  
17 accordance with said contract of employment or policy respecting eligibility or time served.

18 71. Defendants paid nondiscretionary commissions, incentive pay, and/or  
19 nondiscretionary bonuses to Employees but Defendants failed to include these forms of  
20 remuneration in the regular rate of pay upon which vacation wages were calculated and paid.

21 72. Defendants also failed to provide Plaintiffs and Employees with compensation at  
22 their final rate of pay for unused vested paid vacation days upon termination.

23 73. Therefore, pursuant to, Plaintiffs and Employees seek to recover penalties pursuant  
24 to Labor Code § 227.3.

25 **SIXTH CAUSE OF ACTION**  
26 **FAILURE TO COMPLY WITH LABOR CODE §§ 245 *ET SEQ.* AND 246**  
27 **(Against All Defendants)**

28 74. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in

1 full herein.

2 75. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time  
3 to Employees, including at the amount, terms, and rate of compensation set forth in said law. At  
4 times relevant, Defendants have failed compute the amount due for paid sick time in conformance  
5 with the pay calculation under California Labor Code § 246(1).

6 76. Defendants paid nondiscretionary commissions, incentive pay, and/or  
7 nondiscretionary bonuses to Employees but Defendants failed to include these forms of  
8 remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than  
9 calculating the amount of paid sick time due when sick time is used according to the requirements  
10 set forth in California Labor Code § 246(1), Defendants paid sick leave to Employees at a lower  
11 rate, in violation of the law.

12 77. Therefore, Plaintiffs and Employees seek to recover penalties pursuant to Labor  
13 Code §§ 245 *et seq.* and 246.

14 **SEVENTH CAUSE OF ACTION**  
15 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**  
16 **IN VIOLATION OF LABOR CODE § 2802**  
17 **(Against All Defendants)**

18 78. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in  
19 full herein.

20 79. Under Labor Code § 2802(a) an employer must indemnify its employees for all  
21 necessary expenditures or losses incurred by the employee in direct consequence of the discharge  
22 of his or her duties, or of his or her obedience to the directions of the employer.

23 80. Employees incurred necessary expenditures in the performance of their job duties for  
24 Defendants, namely mileage and/or gas costs incurred in driving personal vehicles for work-related  
25 purposes and/or public transit fees, the cost of automobile maintenance from driving personal  
26 vehicles for work-related purposes, the cost of personal cell-phone usage, the cost of internet usage,  
27 and the cost of uniform cleaning, which were necessary to perform their duties under Defendants'  
28 employ. From four (4) years prior to the original filing of this lawsuit and continuing to the present,

1 Defendants consistently failed to reimburse Employees for these necessarily incurred business  
2 expenses.

3 81. As a result of the unlawful acts of Defendants, Employees have been deprived of  
4 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,  
5 plus interest and penalties thereon, attorneys' fees, and costs.

6 **EIGHTH CAUSE OF ACTION**

7 **FAILURE TO COMPLY WITH LABOR CODE § 2751**

8 **(Against All Defendants)**

9 82. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in  
10 full herein.

11 83. Labor Code §2751(a) states: "Whenever an employer enters into a contract of  
12 employment with an employee for services to be rendered within this state and the contemplated  
13 method of payment of the employee involves commissions, the contract shall be in writing and shall  
14 set forth the method by which the commissions shall be computed and paid."

15 84. Further, Labor Code §2751(b) states in pertinent part: "The employer shall give a  
16 signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt  
17 for the contract from each employee."

18 85. During the relevant time period, Defendants had a consistent and uniform policy,  
19 practice and procedure, when entering into contracts of employment with aggrieved employees for  
20 services to be rendered within California and the contemplated method of payment involved  
21 commissions, of failing to utilize a written contract signed by both the employer and employee  
22 setting forth the method by which the commissions shall be computed and paid.

23 86. Defendants' pattern, practice and uniform administration of corporate policy  
24 regarding commission contracts as described herein is unlawful and creates an entitlement to  
25 recovery by Employees, in a civil action, to the extent allowed by law.

26 87. Therefore, Plaintiffs and Employees seek to recover penalties pursuant to Labor  
27 Code § 2751.

28 **NINTH CAUSE OF ACTION**

**VIOLATION OF LABOR CODE § 226(a)**

**(Against All Defendants)**

88. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

89. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; these statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

90. Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Employees, by Defendants, failed to include the above requirements enumerated above. Employees' wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9). The wage statements provided to Employees were confusing and required Employees to engage in discovery and refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Employees. Additionally, Specifically, Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of compensation of their Employees. Moreover, the wage statements given to Employees by Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal periods and rest breaks, all of which Defendants knew or reasonably should have known were owed to Employees, as alleged hereinabove. The wage statements provided to Employees were confusing and required Employees to engage in discovery and refer to outside sources to verify whether their pay was correct and

1 potentially resulting in a miscalculation by the Employees.

2       91. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),  
3 Employees suffered injuries, including among other things confusion over whether they received all  
4 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing  
5 them to make mathematical computations to analyze whether the wages paid in fact compensated  
6 them correctly for all hours worked.

7       92. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover the  
8 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation  
9 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding  
10 an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs  
11 and reasonable attorneys' fees.

12       93. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a civil  
13 penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay  
14 period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each  
15 pay period.

16       94. Plaintiffs are seeking penalties against Defendants under Labor Code § 226.3, and  
17 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be  
18 shown according to proof.

19                                   **TENTH CAUSE OF ACTION**  
20                                   **VIOLATION OF LABOR CODE § 221**  
21                                   **(Against All Defendants)**

22       95. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in  
23 full herein.

24       96. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or  
25 receive from an employee any part of wages theretofore paid by said employer to said employee."

26       97. Defendants unlawfully received and/or collected wages from Employees.  
27 Defendants made payments of wages to Employees via direct deposit into their personal bank  
28 accounts. However, Defendants unlawfully removed said wages from the bank accounts of

1 Aggrieved Employees without permission and authorization in violation of Labor Code § 221.

2 98. As a direct and proximate cause of the unauthorized deductions, Employees have  
3 been damaged, in an amount to be determined at trial.

4 **ELEVENTH CAUSE OF ACTION**

5 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE §§ 1174**  
6 **AND 1174.5**

7 **(Against All Defendants)**

8 99. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in  
9 full herein.

10 100. California Labor Code § 1174 requires that all employers shall keep accurate time  
11 and wage records for all employees. California Labor Code § 1174.5 further requires that any  
12 employee suffering injury due to a willful violation of the aforementioned obligations may seek  
13 damages, including civil penalties, from the employer.

14 101. During the course of Plaintiffs' and Employees' employment, Defendants  
15 consistently failed to maintain accurate time and wage records for Plaintiffs and Employees as  
16 required by California Labor Code § 1174 by failing to pay Plaintiffs and Employees proper wages,  
17 overtime, and premium pay as discussed above.

18 102. Accordingly, Defendants are liable for civil penalties pursuant to the California  
19 Labor Code §§ 1174.5. for the three (3) years prior to the filing of this Complaint.

20 **TWELFTH CAUSE OF ACTION**

21 **VIOLATION OF LABOR CODE § 203**

22 **(Against All Defendants)**

23 103. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in  
24 full herein.

25 104. Numerous Employees are no longer employed by Defendants; they either quit  
26 Defendants' employ or were fired therefrom.

27 105. Defendants failed to pay these Employees all wages due and certain at the time of  
28 termination or within seventy-two (72) hours of resignation. These earned, but unpaid, wages derive

1 from time spent working through meal and rest breaks, driving between jobsites, and performing  
2 other work related activities outside of scheduled shifts,

3 106. The wages withheld from these Employees by Defendants remained due and owing  
4 for more than thirty (30) days from the date of separation of employment.

5 107. Defendants' failure to pay wages, as alleged above, was willful in that Defendants  
6 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties  
7 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up  
8 to thirty (30) days from the date they were due.

9 **THIRTEENTH CAUSE OF ACTION**

10 **VIOLATION OF LABOR CODE § 204**

11 **(Against All Defendants)**

12 108. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in  
13 full herein.

14 109. Labor Code section 204 provides that "[l]abor performed between the 1<sup>st</sup> and 15<sup>th</sup>  
15 days, inclusive, of any calendar month shall be paid for between the 16<sup>th</sup> and 26<sup>th</sup> day of the month  
16 during which the labor was performed, and labor performed between the 16<sup>th</sup> and the last day,  
17 inclusive, of any calendar month, shall be paid for between the 1<sup>st</sup> and 10<sup>th</sup> day of the following  
18 month."

19 110. Labor Code section 210, subdivision (a) states that "[i]n addition to, and entirely  
20 independent and apart from, any other penalty provided in this article, every person who fails to pay  
21 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and  
22 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars  
23 (\$100) for each failure to pay each employee" and "(2) For each subsequent violation, or any willful  
24 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25  
25 percent of the amount unlawfully withheld."

26 111. Plaintiffs are informed and believe, and based thereon allege, that in the one (1) year  
27 before the filing of the Complaint in this Action through the present, Defendants employed policies  
28 and practices that resulted in, at times, not paying Plaintiffs and Class Members in accordance with

1 Labor Code section 204.

2 112. Pursuant to Labor Code section 210, Plaintiffs and Class Members are entitled to  
3 recover penalties for Defendants' violations of Labor Code section 204, in the amount of one  
4 hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200)  
5 for each subsequent violation in connection with each payment that was made in violation of Labor  
6 Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

7 113. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and  
8 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recovery of  
9 penalties, interest, and their costs of suit, as well.

10 **FOURTEENTH CAUSE OF ACTION**

11 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

12 **(Against All Defendants)**

13 114. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in  
14 full herein.

15 115. Plaintiffs, on behalf of themselves, Employees, and the general public, bring this  
16 claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as  
17 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees  
18 and the general public. Plaintiffs seek to enforce important rights affecting the public interest within  
19 the meaning of Code of Civil Procedure § 1021.5.

20 116. Plaintiffs are "person[s]" within the meaning of Business & Professions Code  
21 §§ 17201 and 17204, have suffered injury, and therefore have standing to bring this cause of action  
22 for injunctive relief, restitution, and other appropriate equitable relief.

23 117. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business  
24 practices.

25 118. Wage-and-hour laws express fundamental public policies. Paying employees their  
26 wages and overtime, providing them with meal and rest periods, etc., are fundamental public policies  
27 of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously to enforce  
28 minimum labor standards, to ensure that employees are not required or permitted to work under

1 substandard and unlawful conditions, and to protect law-abiding employers and their employees  
2 from competitors who lower costs to themselves by failing to comply with minimum labor  
3 standards.

4 119. Defendants have violated statutes and public policies. Through the conduct alleged  
5 in this Complaint, Defendants have acted contrary to these public policies, have violated specific  
6 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in  
7 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiffs,  
8 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges  
9 guaranteed to all employees under the law.

10 120. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in  
11 violation of the Business & Professions Code § 17200 *et seq.*

12 121. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and  
13 overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable  
14 care should have known that their conduct was unlawful; therefore their conduct violates the  
15 Business & Professions Code § 17200 *et seq.*

16 122. As a proximate result of the above-mentioned acts of Defendants, Employees have  
17 been damaged, in a sum to be proven at trial.

18 123. Unless restrained by this Court, Defendants will continue to engage in such unlawful  
19 conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make  
20 such orders or judgments, including the appointment of a receiver, as may be necessary to prevent  
21 the use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited  
22 by the Business & Professions Code, including but not limited to the disgorgement of such profits  
23 as may be necessary to restore Employees to the money Defendants have unlawfully failed to pay.

24 **FIFTEENTH CAUSE OF ACTION**

25 **PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ.***

26 **(Against All Defendants)**

27 124. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in  
28 full herein.

1 125. Plaintiffs and Employees are aggrieved employees as defined under Labor Code §  
2 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the  
3 alleged violators, Defendants.

4 126. Plaintiffs seek penalties under Labor Code §§ 2698 and 2699 for Defendants'  
5 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the penalty  
6 provisions, without limitation, based on the following California Labor Code sections: 200, 201,  
7 202, 203, 204, 221, 226, 226.4, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5,  
8 1182.12, 1185, 1194, 1194.2 1197, 1199, 2698, 2699, *et seq.*, 2751, and 2802.

9 127. The penalties shall be allocated as follows: 75% to the Labor and Workforce  
10 Development Agency (LWDA) and 25% to the affected employee.

11 128. Employees also seek any and all penalties and remedies set forth in Labor Code §  
12 558, which states:

13 (a) Any employer or other person acting on behalf of an employer who violates,  
14 or causes to be violated, a section of this chapter or any provision regulating hours  
15 and days of work in any order of the Industrial Welfare Commission shall be subject  
16 to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each  
17 underpaid employee for each pay period for which the employee was underpaid in  
18 addition to an amount sufficient to recover underpaid wages. (2) For each subsequent  
19 violation, one hundred dollars (\$100) for each underpaid employee for each pay  
20 period for which the employee was underpaid in addition to an amount sufficient to  
21 recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid  
22 to the affected employee.

23 (b) If upon inspection or investigation the Labor Commissioner determines that  
24 a person had paid or caused to be paid a wage for overtime work in violation of any  
25 provision of this chapter, or any provision regulating hours and days of work in any  
26 order of the Industrial Welfare Commission, the Labor Commissioner may issue a  
27 citation. The procedures for issuing, contesting, and enforcing judgments for  
28 citations or civil penalties issued by the Labor Commissioner for a violation of this  
chapter shall be the same as those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any other  
civil or criminal penalty provided by law.

129. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of  
Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per  
employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each

violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the extent that Labor Code § 226.3 applies, Plaintiff and Employees also seek such penalties on.

130. Plaintiff Geroska Gay has exhausted his administrative remedies by sending a certified letter to the LWDA and Defendants postmarked on June 28, 2023. Plaintiff Vanessa Martinez has exhausted her administrative remedies by sending a certified letter to the LWDA and Defendants postmarked on September 21, 2023. Plaintiff Patricia Young exhausted her administrative remedies by sending a certified letter to the LWDA and Defendants postmarked on April 30, 2021.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiffs pray for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
6. For penalties pursuant to Labor Code § 2751 for Employees, as may be proven;
7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
8. For restitution and/or damages for all amounts unlawfully withheld from the wages for all class members in violation of Labor Code § 221, as may be proven;
9. For penalties pursuant to Labor Code § 226.3, as may be proven;

10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

11. For restitution and/or damages for all amounts unlawfully withheld from the wages for Employees in violation of Labor Code § 204, as may be proven;

12. For penalties pursuant to Labor Code § 227.3, as may be proven;

13. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;

14. For penalties pursuant to Labor Code § 1174.5, as may be proven;

15. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;

16. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;

17. For compensatory damages in the amount of all previously unreimbursed business expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants from four (4) years prior to the original filing of this action, as may be proven;

18. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;

19. For all general, special, and incidental damages as may be proven;

20. For an award of pre-judgment and post-judgment interest;

21. For an award providing for the payment of the costs of this suit;

22. For an award of attorneys' fees; and

23. For such other and further relief as this Court may deem proper and just.

### **DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

1 DATED: May 1, 2025

D.LAW, INC.

2  
3 By Roman Shkodnik  
4 Roman Shkodnik  
5 David Yermian  
6 Attorneys for Plaintiff  
7 GEROSKA GAY  
8 and the putative class

7 DATED: May 1, 2025

BERGER MONTAGUE PC

8  
9 By Alexandra K. Piazza  
10 Mariyam Hussain  
11 Olivia Lanctot  
12 Attorneys for Plaintiffs  
13 PATRICIA YOUNG and PHILLIP  
14 JACKSON and the putative class

13 DATED: May 1, 2025

BIBIYAN LAW GROUP, P.C.

14  
15 By David D. Bibiyan  
16 Jeffrey D. Klein  
17 Joshua Shirian  
18 Attorneys for Plaintiff  
19 VANESSA MARTINEZ  
20 and the putative class

21. For an award providing for the payment of the costs of this suit;
22. For an award of attorneys' fees; and
23. For such other and further relief as this Court may deem proper and just.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

DATED: April 30, 2025

D.LAW, INC.

By \_\_\_\_\_  
Roman Shkodnik  
David Yeremian  
Attorneys for Plaintiff  
GEROSKA GAY  
and the putative class

DATED: April 30, 2025

BERGER MONTAGUE PC

By \_\_\_\_\_  
Alexandra K. Piazza  
Mariyam Hussain  
Olivia Lanctot  
Attorneys for Plaintiffs  
PATRICIA YOUNG and PHILLIP  
JACKSON and the putative class

DATED: April 30, 2025

BIBIYAN LAW GROUP, P.C.

By Vedang J. Patel  
David D. Bibiyan  
Vedang J. Patel  
Attorneys for Plaintiff  
VANESSA MARTINEZ  
and the putative class

expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants from four (4) years prior to the original filing of this action, as may be proven;

18. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;

19. For all general, special, and incidental damages as may be proven;

20. For an award of pre-judgment and post-judgment interest;

21. For an award providing for the payment of the costs of this suit;

22. For an award of attorneys' fees; and

23. For such other and further relief as this Court may deem proper and just.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

DATED: May 1, 2025

D.LAW, INC.

By \_\_\_\_\_  
Roman Shkodnik  
David Yeremian  
Attorneys for Plaintiff  
GEROSKA GAY  
and the putative class

DATED: May 1, 2025

BERGER MONTAGUE PC

By  \_\_\_\_\_  
Alexandra K. Piazza  
Mariyam Hussain  
Olivia Lanctot  
Attorneys for Plaintiffs  
PATRICIA YOUNG and PHILLIP  
JACKSON and the putative class

DATED: May 1, 2025

BIBIYAN LAW GROUP, P.C.

By \_\_\_\_\_  
David D. Bibiyan

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

**BERGER MONTAGUE PC**  
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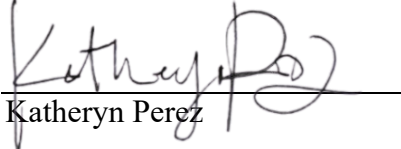
6 ☐ **(BY MAIL)** I placed such envelope with postage thereon fully paid in the United States  
7 mail at Glendale, California. I am “readily familiar” with this firm’s practice of collecting and  
8 processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day  
9 in the ordinary course of business. I am aware that on motion of party served, service is  
presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of  
deposit for mailing in affidavit.

10 ☒ **(BY ELECTRONIC TRANSMISSION)** I electronically served the foregoing document  
11 in PDF format. I caused a true copy of the foregoing document(s) listed above to be served by  
12 electronic email transmission at the time shown on each transmission, to each interested party at  
the email address(es) shown above. Each transmission was reported as complete and without  
error.

13 ☐ **(BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package  
14 provided by an overnight delivery carrier and addressed to the persons at the address above. I  
placed the envelope or package for collection and overnight delivery at an office or a regularly  
utilized drop box of the overnight delivery carrier.

15 ☒ **(STATE)** I certify (or declare) under penalty of perjury under the laws of the State of  
16 California that the foregoing is true and correct.

17 Executed on May 15, 2025, at Glendale, California.

18   
19 Katheryn Perez