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on behalf of themselves and others similarly situated and aggrieved

FILED
Superior Court of California
County of Los Angeles
08/23/2023

David W. Slayton, Executive Officer / Clerk of Court

By: M. Arellanes Deputy

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

TAHIRHA BUTLER, ISAIAH BERRY
PHILLIPS, and NAKYA THOMAS,
individuals, on behalf of themselves and
others similarly situated,

Plaintiffs,

vs.

FV STORM GROUP, INC., a New York
Corporation; IGOR BARBOSA, an
individual; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 23STCV13678

CLASS ACTION

Assigned for All Purposes To:

Hon. Elihu M. Berle

Dept.: 6

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for All Hours Worked;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Labor Code § 226.7;
4. Rest-Break Liability Labor Code § 226.7;
5. Violation of Labor Code § 246
6. Violation of Labor Code § 226(a)
7. Violation of Labor Code § 221;
8. Violation of Labor Code § 204;
9. Violation of Labor Code § 203;
10. Failure to Reimburse Necessary Business Expenses under Labor Code § 2802; and
11. Violation of Business & Professions Code § 17200 *et seq.*; and
12. Penalties under PAGA, Labor Code § 2698

Original Complaint Filed: June 14, 2023

Trial Date: None set.

DEMAND FOR JURY TRIAL

1 Plaintiffs TAHIRHA BUTLER, ISAAH BERRY PHILLIPS, and NAKYA THOMAS
2 (hereinafter “Plaintiffs”), on behalf of themselves and all other similarly situated non-exempt,
3 hourly employees employed by Defendants in California (collectively, “Employees”; individually,
4 “Employee”) complains of Defendants, and each of them, as follows:

5 **INTRODUCTION**

6 1. Plaintiffs bring this action on behalf of themselves and all other similarly situated
7 current and former Employees within the State of California who, at any time from four years
8 prior to the filing of this lawsuit, are or were employed as hourly non-exempt employees by
9 Defendants FV STORM GROUP, INC., a New York corporation; IGOR BARBOSA, and
10 individual; and DOES 1 through 50, inclusive (all defendants being collectively referred to as
11 “Defendants”). Plaintiffs allege that Defendants, and each of them, violated various provisions of
12 the California Labor Code, relevant orders of the Industrial Welfare Commission (“IWC”), and the
13 California Business & Professions Code.

14 2. Plaintiffs worked as sales representatives and brand ambassadors and in similar and
15 related positions for Defendants soliciting donations for various alleged charitable groups and
16 causes. Plaintiffs resided in California and in the Los Angeles County area during the relevant
17 time period and worked at various locations throughout Los Angeles County and surrounding
18 areas. Plaintiff Phillips was employed by Defendant as a brand ambassador with duties including
19 working in the field to solicit donations to charitable organizations. Plaintiffs Butler and Thomas
20 also worked as brand ambassadors for Defendants and also served as team leaders with additional
21 duties including training, recruiting, and scouting locations. Plaintiffs and the Class members were
22 instructed to work at assigned and directed locations to ask people passing by at locations such as
23 stores or markets to donate to charitable organizations who paid Defendants for conducting these
24 solicitations. They were trained by Defendants to generally focus on older people who looked
25 professional and might forget they agreed to donate \$40 per month to a particular charity.
26 However, if these “target” donors were not fruitful in generating sales, they were instructed to find
27 anyone who would donate. Plaintiff and the Class members were provided an iPad they would use
28 to help connect donors who agreed to donate with the charities and fill out paperwork.

1 3. Plaintiffs and the other similarly situated Employees of Defendants worked based
2 out of Defendants' offices and facility in Venice, California or wherever Defendant BARBOSA
3 was located or deemed suitable. They worked at Defendants' behest without being paid all wages
4 due and without being provided all their required meal periods and rest breaks. Upon information
5 and belief, Plaintiffs were employed by Defendants and (1) shared similar job duties and
6 responsibilities; (2) were subjected to the same policies and practices; and (3) endured similar
7 violations at the hands of Defendants as the other Employee Class members who served in similar
8 and related positions. Defendants required Plaintiffs and the Employees in the Class to work off
9 the clock and failed to record accurate time worked by these Employees, failed to pay them at the
10 appropriate rates for all hours worked, unlawfully deducted wages, failed to pay all wages due and
11 owing at termination or resignation, failed to reimburse necessary business expenses and provided
12 Plaintiffs and the Class members with inaccurate wage statements that prevented them from
13 learning of these unlawful pay practices. Defendants also failed to provide Plaintiffs and the Class
14 with lawful meal and rest periods, as Employees were required to remain under Defendants'
15 control and were not provided with the opportunity to take full uninterrupted and duty-free rest
16 periods and meal breaks, as required by the Labor Code and the applicable paragraphs of the IWC
17 Wage Orders.

18 4. Defendant FV STORM GROUP, INC. is a New York corporation which lists its
19 principal address and California location as in Santa Ana, California in Orange County. However,
20 upon information and belief, Defendant FV STORM GROUP, INC. maintained business
21 operations in Venice, California in Los Angeles County and placed Class Members at various field
22 locations throughout Los Angeles County and surrounding areas. FV STORM GROUP, INC.
23 appears to have been registered in Georgia and operated there prior to initiating California
24 operations, and upon information and belief convinced some Employees to relocate to California
25 for those purposes.

26 5. Defendant IGOR BARBOSA is the owner and manager of Defendant FV STORM
27 GROUP, INC., and is also its registered agent for service in California. Upon information and
28 belief, BARBOSA resided in California and in Los Angeles County during the relevant time

1 period based out of Venice, California and also rented residential locations where he resided and
2 operated in Los Angeles County. BARBOSA as the owner and operator of FV STORM GROUP,
3 INC., is personally liable for some of the claims alleged in this Complaint pursuant to Labor Code
4 § 558.1, which provides that: “Any employer or other person acting on behalf of an employer,
5 who violates, or causes to be violated, any provision regulating minimum wages or hours and days
6 of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated,
7 Sections 203 [payment of wages on termination of employment], 226 [wage statement
8 requirements], 226.7 [meal and rest period requirements], 1193.6 [recovery of attorney’s fees for
9 lawsuits to recover unpaid minimum wage and/or overtime], 1194 [failure to pay minimum
10 wage/overtime for all hours worked], or 2802 [failure to reimburse necessary business expense],
11 may be held liable as the employer for such violation.”

12 6. This Court has jurisdiction over this Action pursuant to California Code of Civil
13 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
14 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
15 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
16 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
17 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Los Angeles
18 County, and Defendants operated and maintained offices in Los Angeles County and employed
19 Plaintiffs and other Class Members there.

20 7. The true names and capacities, whether individual, corporate, associate, or
21 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
22 unknown to Plaintiffs, who therefore sues these Defendants by such fictitious names under Code
23 of Civil Procedure § 474. Plaintiffs are informed and believe and thereon allege that Defendants
24 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
25 some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend
26 this Complaint to reflect the true names and capacities of the Defendants designated herein as
27 Does 1 through 50 when their identities become known.

8. Plaintiffs are informed and believe and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all respects as the employers or joint employers of Employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of Employees, created and implemented the policies and practices that governed the employment of Plaintiffs and the Class members and dictated their job duties and responsibilities, or otherwise suffered or permitted Plaintiffs and the other Employee Class members to work, or engaged, thereby creating a common law employment relationship, with the Employee Class members. Therefore, Defendants, and each of them, employed or jointly employed the Employee Class members.

FACTUAL BACKGROUND

9. The Employees who comprise the Class, including Plaintiffs, are non-exempt employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare Commission (“IWC”). During the period of four years prior to the filing of this action through its resolution, Plaintiffs and the Class members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiffs also contend that Defendants failed to pay Plaintiffs and the Class members all wages due and owing, including by requiring off the clock work, failed to provide meal and rest breaks, and failed to furnish accurate wage statements and timely pay all wages owed or reimburse business expenses, all in violation of various provisions of the California Labor Code and applicable paragraphs of the IWC Wage Orders.

10. During the course of Plaintiffs' and the Class members' employment with Defendants they were not paid all wages they were owed, including for all work performed (resulting in "off the clock" work) and for all their overtime hours worked, and they had wages unlawfully deducted by Defendants. This has resulted in systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-exempt, hourly employees in California including in Los Angeles County.

1 11. Defendants failed to maintain any record of the hours worked by Plaintiffs and as
2 a result, failed to pay for all hours worked including failing to pay overtime and double-time
3 when appropriate. Defendants did not utilize any systems to allow for real time entries for
4 timekeeping. Plaintiff Butler and Plaintiff Thomas were generally scheduled to work six days a
5 week, with shifts varying in length, typically ten to twelve hours a day. Plaintiff Phillips was
6 generally scheduled to work six days a week as well, with shifts varying in length, typically at
7 least nine to ten hours a day.

8 12. Off the clock work was pervasive, and a typical day and week for Plaintiffs and
9 the other Class members is reported by Plaintiffs Butler and Thomas. They were routinely
10 scheduled as early as 7:00 or 8:00 in the morning for interview appointments with candidates
11 seeking employment and then at around 9:00 a.m. they were expected to attend to a daily meeting
12 that was characterized by Defendants to be voluntary. However, anyone who failed to attend
13 would be scolded or reprimanded for it by Defendant BARBOSA. Later on, at around 10.30 in
14 the morning, Plaintiffs Butler and Thomas were required to drive out to the assigned jobsite,
15 usually a moderate to high-traffic business, to begin her duties of stopping people, giving
16 speeches, obtaining sign ups along with contact information and ultimately achieving donations
17 from people passing through this area. Plaintiffs were expected to be out in the field attempting to
18 obtain donations for at least 7 or 8 hours. They were then required to travel back to Defendants'
19 office for an end-of-day meeting that would last from an hour to two hours, in which they and
20 other co-workers in a similar positions had to "break down the day", which essentially meant
21 discussing the numbers accomplished for that day such as number of people stopped, number of
22 speeches made, number of signups completed, and number of donations obtained. This resulted in
23 workdays which generally spanned at least 10 hours if not more.

24 13. Additionally, every Wednesday, Plaintiffs and their co-workers were expected to
25 attend a team networking event scheduled by Defendants. These networking events would serve
26 for socializing, networking, note-taking, conversing and discussing with BARBOSA and others
27 strategies for improving and developing an approach to obtain more donations. These gatherings
28 would usually extend well into the night, and although they were also characterized by Defendant

1 BARBOSA as a voluntary gathering, anyone who failed to attend would be scolded or
2 reprimanded for it. All Plaintiffs and Class members were also required by Defendants to
3 communicate on Sundays, usually their single day off, by sending messages with weekly
4 production goals and detailing their focus for the coming week, information on upcoming
5 training, and addressing recruitment and any calls for networking scheduled for the week. This all
6 resulted in weekly workdays spanning 12 hours or more.

7 14. Similarly, Plaintiff Phillips was expected to attend the daily meeting at around
8 9:00 a.m. and would be reprimanded if he did not attend despite its alleged voluntary status. The
9 purpose of these morning meetings was to practice speeches and sales tactics, take notes on the
10 alleged incentives offered by Defendants such as travel opportunities, competitions and prizes,
11 provide information related to job duties and scheduling, and reiterate the qualities of target
12 donors. Then at around 10:30 in the morning, Plaintiff Phillips would have to take the bus or
13 request a ride from another employee to get to the assigned jobsite, usually a moderate to high-
14 traffic business, to begin his duties of stopping people, giving speeches, obtaining sign ups along
15 with contact information and ultimately achieving donations from people in the assigned vicinity.
16 Plaintiffs were expected to be out in the field attempting to obtain donations for at least 7 to 8
17 hours. Finally, at around 6.30 in the afternoon, Plaintiff Phillips was allowed to allegedly finish
18 the workday, however, he was required by Defendant BARBOSA to send messages with the
19 “break down the day”, which essentially meant listing the numbers accomplished on that day.
20 This resulted in workdays of at least 8 hours or more. Plaintiff Phillips was also required to attend
21 the team networking events mandated by Defendant BARBOSA and to do so again off the clock.

22 15. Plaintiff Phillips was also required to receive messages through group chats
23 created by Defendants, or in private messages from managers directed only to him as early as
24 7:00 in the morning or as late as 11:00 at night. Plaintiff Phillips was also required by Defendant
25 to attend to special presentations and take notes and communicate on Sundays. These
26 presentations were usually videoconferences with upper management or highly successful
27 employees providing recommendations on how to improve work techniques, obtain promotions
28 and ultimately build wealth within the company. While Plaintiff was on the bus on his way to

1 Defendants' office or at other times, he would receive messages from supervisors with
2 aspirational videos to watch, typically about how other employees had used the money they
3 earned while working for Defendant and advising on steps to achieve a promotion. Plaintiff
4 Phillips made complaints to supervisors and other management personnel about receiving
5 messages at all hours, being required to work off the clock, not being paid for all hours worked,
6 and for not being paid any overtime wages. Instead of remedying these violations and providing
7 reassurances to Plaintiff Phillips that his complaints were not going unheeded, Defendant
8 BARBOSA terminated him in retaliation for his complaints. In December of 2022, he complained
9 about receiving another early text message at 8:00 a.m. and then again late at night at 11:00 p.m.
10 from a direct supervisor. Plaintiff Phillips was set aside during the morning meeting by
11 Defendant BARBOSA and advise that although they had no complaints about Plaintiff's
12 performance, Defendants believed he would be happier at a different place and were terminating
13 him. Plaintiff believes he was terminated in retaliation for complaining about the unlawful
14 working conditions and pay practices he and his fellow Class Members were required to endure
15 and withstand at the hands of Defendants.

16 16. Plaintiffs and upon information and belief the other Class members were paid
17 weekly. Wage statements were often not provided or accessible, and Defendants maintained no
18 timekeeping records or regular scheduled hours. There was instead an expectation that the
19 Employees would work at least eight to ten hours a day with no recorded shift and meal period
20 beginning and end time punches to accurately record hours worked. Defendants paid employees
21 by rounded hours to whole numbers for an certain number of hours that would work out to be
22 what Defendants wanted to pay at the regular rate. Despite the fact that overtime hours beyond
23 eight in a day and forty in a week were generally unpaid by Defendants at required premium
24 rates. If and when Defendants did pay any overtime, it was significantly underpaid given that
25 Defendants failed to include all forms of remuneration Class members were paid in the regular
26 rate used to calculate and pay overtime. Defendants attempted to justify this manifest failure to
27 record and pay for all hours worked by claiming Plaintiffs the Class Members were salaried
28 employees. This alleged pay policy however was belied by Defendants' uniformly applied

1 practice of compensating by weekly or daily minimums based on the hours worked by Employees
2 and paying them any additional bonuses for meeting sales/donation thresholds, and of rounding
3 and shaving away significant hours worked from all Class members on an ongoing daily and
4 weekly basis to avoid paying for all hours or to avoid having to pay them at overtime premiums.

5 17. Defendants thus failed to pay for all hours worked by pervasive rounding and
6 shaving and by failing to maintain records and by requiring work before and after scheduled
7 shifts. More specifically, the methodology by which Plaintiffs were compensated is a confusing
8 conglomeration of all sorts of alleged types of compensation and remuneration they were
9 allegedly supposed to receive. No timekeeping records were kept, and Plaintiffs were supposed to
10 receive certain types of commissions or bonuses for sales (i.e. total donations) above certain
11 numbers, which Defendant BARBOSA set in a seemingly random and capricious manner
12 depending on his mood or esteem for the Employee. In some instances, Employees were paid a
13 certain daily rate for expected scheduled hours worked plus an alleged commission of either a flat
14 rate or a rate tied to sales numbers (i.e. committed donors). In other instances, employees were
15 given sales goals and weekly numbers of donors they were expected to sign up and if those
16 goals were not met, then employees would receive only a modest monthly base rate.

17 18. Defendants required employees to work every day of the week except for Sundays,
18 and for scheduled shifts of anywhere from eight to ten hours in the field at sites soliciting
19 donations. For instance, Plaintiff Butler was generally scheduled by Defendants to work 11-12
20 hour days for six days a week. These daily shifts were supposed to be compensated at a flat rate,
21 such as \$180 or \$200 per day, however if and when Defendants paid them that “base,” the daily
22 totals result in an average hourly wage rate that is well below the California minimum wage. In
23 other instances, employees were promised a weekly base pay according to Defendant BARBOSA
24 of \$600 per week, also with the possibility of receiving bonuses or commissions for donations
25 secured. Bonuses or commissions were difficult to attain and were paid begrudgingly by
26 Defendants, and Defendant BARBOSA appeared to change as he saw fit the payment rates and
27 thresholds.

1 19. Given the unsettled and fluid compensation methodology, it is uncertain whether
2 Defendants paid Plaintiff and other Class Members as hourly employees, on a commission basis,
3 on a salaried basis, or on a piece rate basis. Defendants' compensation methodology is unlawful
4 under any of those addressed in the Labor Code. If Defendants paid Plaintiffs and the Class
5 member on an hourly basis, it was too low and Defendants failed to pay for all hours worked at
6 the required regular and overtime wage rates. More specifically, the regular rate paid was below
7 minimum wage and to whatever extent any bonuses and additional commissions were paid to
8 Plaintiffs and the Class members, Defendants failed to include them in the regular rate used to
9 calculate and pay any overtime hours they worked. In reality, Defendants purposefully avoided
10 paying any overtime hours despite requiring well-over eight hours of labor in a daily work shift
11 or over 40 hours in a work week. Similarly, if Plaintiffs and the Class members were paid on a
12 commission or piece rate type basis, then Defendants not only failed to pay for all hours they
13 worked, but they also failed to compensate for their non-productive time and their non-
14 compensated rest break and recovery period time, as required e.g. under Labor Code § 226.2.

15 20. Under any methodology, Defendants failed to pay Plaintiffs and the Class
16 members for all their hours worked and failed to pay them at the appropriate and required rates,
17 and/or failed to pay them bonuses and commissions on all their sales/donations. Off the clock
18 work included requiring morning "Training Leadership Training" – talk about how to be a top
19 seller and move up in the company and start their own business. They were not paid for this time.
20 Defendants and their owner and managers would contact Plaintiffs at all hours of the day,
21 including frequently when they were not working and not being paid. In fact, when their assistant
22 manager contacted Employees, they were expected to respond promptly and would be in trouble
23 if they were too slow. These intrusions into Plaintiffs' personal time included use of cell phone
24 applications and text messaging to ask questions and address scheduling and work tasks and to
25 provide Plaintiffs with sales opportunities they were required to contact. This also included
26 follow up questions on sales and also information he was required to review on video. Plaintiffs
27 and their co-workers were also required to spend significant amounts of time during times when
28 they were not scheduled to work drafting and communicating weekly sales goals which

1 Defendants compelled them to create and discuss without any compensation, and Defendants also
2 required other marketing and advertisement drafting and posting during off-duty hours again
3 without compensation. Plaintiffs and others complained about all this uncompensated and non-
4 productive work time they were required to endure to no avail, and such complaints would
5 ultimately lead to their termination or other retribution.

6 21. Plaintiffs also report that Defendant BARBOSA would also require Plaintiffs and
7 upon information and belief other Class members to attend after hours training sessions at
8 different restaurants and bar locations. They were informed on techniques for selling and
9 retaining donors and filling out forms and the like, and again none of this required and non-
10 productive time was compensated by Defendants. Defendant BARBOSA was also responsible for
11 convincing Plaintiff Butler to relocate from Georgia, where she was working for FV STORM
12 GROUP, INC., to the Los Angeles area, and he ensured the employees relocated to California
13 from Georgia would stay with the company in Los Angeles. However, there were other strings
14 attached, as Plaintiff Butler has also reported systematic unlawful deductions from her wages.
15 Upon information and belief, Defendant BARBOSA would rent Air B&B's or similar rental
16 locations for many thousands of dollars per month to provide housing for Plaintiff Butler and
17 other co-workers. He would then charge Plaintiff Butler and her fellow employees rent for living
18 there. Plaintiff Butler paid \$680/month to BARBOSA in a form resembling deduction from her
19 wages when Defendants paid them to her. If rent wasn't paid by Plaintiff, BARBOSA argued
20 with her about automatically deducting it anyway from her pay, which was already two weeks in
21 arrears under Defendants' policies and practices.

22 22. The methodology by which Plaintiffs were compensated is a confusing
23 conglomeration of all sorts of alleged types of compensation and remuneration they and their co-
24 workers were allegedly supposed to receive. When considering the fact that Defendants required
25 systematic off the clock work at trainings or other events or traveling between work sites or else
26 required messaging and calls and work in other applications before and after scheduled shift
27 hours, Plaintiffs and the Class Members worked shifts generally spanning at least 11 or 12 hours
28 or more. Also, Defendants untimely issued weekly wage statements and payment checks which

1 listed rounded numbers of hours worked and total pay for the week and nothing more, including
2 no listing of the number of donations they achieved and no payment of any overtime hours over
3 eight in a work shift and forty in a work week. Defendants also maintained an unlawful policy
4 and practice of paying any wages earned in a pay period by two pay periods in arrears, in
5 violation of the requirement to timely pay all wages, including under Labor Code § 204. Upon
6 information and belief, the same occurred in connection with the other Plaintiffs and Class
7 members.

8 23. Additionally, Defendants followed a policy of failing to pay all Paid Time Off
9 (“PTO”) accrued by the Employees and not paying for their Sick Days accrued and incurred
10 either at all or in a timely manner, including as required under Labor Code § 227.3 and Labor
11 Code § 245 *et seq.* As further detailed above, Plaintiffs were therefore not paid for all their hours
12 worked at the required minimum, overtime and double time wage rates due to Defendants’ policy
13 and practice of requiring them to work off the clock and without pay, and failing to pay them at
14 their required overtime rates for all hours over eight in a shift or over forty in a week. With work
15 shifts generally being scheduled for eight hours or more, this unpaid off the clock work resulted
16 in Plaintiffs and the Class members working past eight hours on a shift, which required that they
17 be paid at the correct overtime rate of 1.5 times their regular rate.

18 24. Defendants also systematically miscalculated and underpaid overtime wages
19 Plaintiffs and the Class members earned. More specifically, Defendants paid employees bonuses
20 which were tied directly to the daily performance and sales numbers. As Plaintiffs and the Class
21 members generally worked over eight hours on their shifts, even when only scheduled for eight,
22 any overtime payments they received failed to account for bonus payments as a form of
23 remuneration. Defendants failed to include the bonus payments for all regular hours worked in
24 their calculation of the applicable hourly rate used to pay overtime, and this uniformly applied
25 policy and practice resulted in systematic underpayment of overtime wages to Employees.

26 25. Defendants thus systematically underpaid Plaintiffs and the Class members by
27 failing to pay them at the required overtime rates for all hours over eight in a work shift or over
28 forty in a work week, and all hours over twelve in a day at the required double time rate. Upon

1 information and belief, the Class members were bound by similar scheduling and work policies
2 which Defendants required them to follow, and endured similar violations at Defendants' hands
3 as Plaintiffs.

4 26. Defendants have either failed to maintain timekeeping records for Plaintiffs that
5 would permit Plaintiffs to discover the nature and extent of the off the clock work Defendants'
6 required and the actual hours Plaintiffs worked, or have otherwise declined to produce them to
7 Plaintiffs in response to a timely and lawful requests. By failing to pay for all hours worked, and
8 by deducting time for meal periods that were not lawfully provided and requiring pervasive off
9 the clock work, Defendants have committed knowing and intentional ongoing violations of the
10 record keeping requirements under the Labor Code, including section 1174.

11 27. The failure to pay for all hours worked and underpayment of wages to Plaintiffs
12 and the Class members is and has been a direct consequence of Defendants' unlawful
13 compensation policies and practices, which applied uniformly to the Class members working for
14 Defendants in California. As a result of the above described unlawful requirements to work off
15 the clock, the failure to accurately record all hours worked and pay wages at the correct rates, and
16 the other wage violations they endured at Defendants' hands, Plaintiffs and the Class members
17 were not properly paid all wages earned and all wages owed to them by Defendants, including
18 when working more than eight hours in any given day and/or more than forty hours in any given
19 week. As a result of Defendants' unlawful policies and practices, Plaintiffs and Class members
20 incurred overtime hours worked for which they were not adequately and completely
21 compensated, in addition to the hours they were required to work off the clock at their regular
22 rates.

23 28. Therefore, from at least four years prior to the filing of this lawsuit and continuing
24 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
25 hours worked, and failing to pay minimum wages for all time worked, as required by California
26 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
27 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
28 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a

1 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
2 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

3 29. Defendants also failed to provide Plaintiffs and the Class members with their
4 required first and second meal periods, and their first, second, and third required rest breaks. The
5 above described off the clock work contributed to Defendants' common policy of failing to
6 provide lawful meal periods to Plaintiffs and the Class members, as required under the Labor
7 Code and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically failed to
8 authorize and permit Plaintiffs and the employee Class Members to take all required 10-minute
9 rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).
10 Instead, Defendants expected Employees in the field to use any facilities they could find for
11 breaks or to get a meal and Defendants made no effort whatsoever to schedule breaks or
12 otherwise authorize and permit Plaintiffs and the Class members to take them. Meal periods and
13 rest breaks weren't prohibited, but they certainly were not encouraged or even planned for, as
14 Defendant BARBOSA wanted to minimize time away from soliciting donations. Thus, any
15 breaks that were taken by Plaintiffs and the Class members were either unlawfully short or were
16 on duty and interrupted by work demands or were also untimely.

17 30. Defendants thus failed to provide Plaintiffs with first and second meal periods and
18 three ten-minute rest breaks as required for scheduled shifts over ten hours in duration.
19 Defendants heavily frowned upon Employees taking lunch breaks, or any break for that matter.
20 Defendants' stated policy to Plaintiffs and the Class Members was that any rest breaks or rest and
21 recovery periods or meal period translated into missed donations, i.e. missed money. As a result,
22 Plaintiffs would seldomly take meal breaks or rest breaks. Defendants made no effort to schedule
23 any rest breaks or meal periods despite requiring Plaintiffs to work well over eight hours per shift.
24 If Plaintiffs were ever able to eat something for a meal, it was generally not during an
25 uninterrupted 30 minute off duty meal break, and Plaintiffs would instead eat something quickly
26 between presentations to potential donors given the demanding requirements Defendants placed
27 on Plaintiffs.

1 31. However, even when Plaintiffs and the Class members were able to take a meal
2 period, it was often provided well after the first five hours of a work shift, or was provided for
3 less than the required 30 minutes or was otherwise interrupted by work duties. To whatever
4 extent Defendants made any meal period premium payments under Labor Code § 226.7, they
5 were not paid for all required occasions where meal periods were not provided or were not timely
6 provided or were provided for less than 30 duty free minutes. Additionally, upon information and
7 belief, Defendants failed to include all forms of remuneration in the regular rate used to calculate
8 and pay the meal premiums on the occasions when any were paid.

9 32. Defendants did not have a policy or practice which provided or recorded all the
10 legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest
11 periods to the Plaintiffs and the other Class members. As a result, Defendants' failure to provide
12 Plaintiffs and the Class members with all legally required off-duty, unpaid meal periods and all
13 the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business
14 records, or lack thereof. Additionally, as addressed above, Defendants followed a practice of
15 requiring off the clock work, in a manner that would impact when Employees were to receive
16 meal periods and rest breaks, thus leading to further violations. Defendants have either failed to
17 maintain required records of when meal periods were actually provided or failed to produce them
18 in response to Plaintiffs' timely and lawful requests, or else maintained inaccurate and incomplete
19 records.

20 33. Therefore, for at least four years prior to the filing of this action and through to the
21 present, Plaintiffs and the Class members were unable to take off-duty breaks or were otherwise
22 not provided with the opportunity to take required meal breaks due to Defendants' policies and
23 practices. On the occasions when Plaintiffs and the Class members were provided with a meal
24 period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were
25 not provided with premiums of one hour at the employees' regular rate of compensation in lieu
26 thereof. To the extent Defendants assert they paid any meal period premiums, they failed to do so
27 for all violations, and only did so at the employees' base hourly rate. Meal period violations thus
28 occurred in one or more of the following manners:

- (a) Class members were not provided full thirty-minute duty free meal periods for work days in excess of five (5) hours and were not compensated one (1) hour's wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage Order(s);
- (b) Class members were not provided second full thirty-minute duty free meal periods for work days in excess of ten (10) hours;
- (c) Class members were required to work through at least part of their daily meal period(s);
- (d) Meal periods were provided after five (5) hours of continuous work during a shift; and
- (e) Class members were restricted in their ability to take a full thirty-minute meal period or were otherwise required to remain under Defendants' control during meal periods.

34. Defendants also failed to authorize and permit Plaintiffs and the Class members to take duty-free, net ten minute rest breaks for ever four hours of shift work, or major fraction thereof. There were similar issues with the required net-ten minute rest breaks that Plaintiffs and the Class members were unable to take as with meal periods. Defendants also failed to authorize and permit Plaintiffs and the Class members to take their required duty-free, net ten minute rest periods. Rest breaks were not scheduled, as Defendants' policy was not to provide them, and management did not emphasize the requirement to provide at least one ten minute duty-free rest period for each four hour duty period, or major fraction thereof. Thus, on shift of ten hours or more, Defendants were required to provide at least three duty-free ten minute rest breaks to Plaintiffs and the Class members. Defendants neglected to do so, and even if Employees were provided with one rest break during a scheduled shift, they were not provided with the required second or third rest breaks (on shifts over 8 hours).

35. Given the demanding requirements Defendant placed on Plaintiffs, they were unable to take breaks during their work shifts. Plaintiffs was expected and able to only take a

1 break if and when the job requirements permitted it. Thus, any rest breaks Plaintiffs were able to
2 take were generally not for ten duty-free minutes or were untimely, or else Plaintiffs would
3 simply not take them because the high-performance standards would not permit them to.
4 Defendants further failed to authorize and permit Plaintiffs to take their required duty-free, net
5 ten-minute rest periods, as they were not scheduled and Defendants' policy was not to provide
6 them, and Defendants did not emphasize the requirement to provide at least one ten-minute duty-
7 free rest period for each four hour duty period, or major fraction thereof.

8 36. Defendants' policies and practices thus systematically deny and denied Plaintiffs
9 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal
10 periods. The California Supreme Court has instructed that the rest period requirement obligates
11 employers to authorize and permit employees to take-off-duty rest periods. That is, during rest
12 periods employers must relieve employees of all duties and relinquish control over how
13 employees spend their time. Plaintiffs and the Class members were and are under Defendants'
14 control when they are working through rest breaks, and Defendants failed to schedule or account
15 for required first, second, and third rest breaks during the shifts Plaintiffs and the Class members
16 generally worked.

17 37. Plaintiffs and the Defendants' Employees in the Class were also not authorized
18 and permitted to take lawful rest periods, were systematically required by Defendants to work
19 through or during breaks, and were not provided with premiums of one hour at the Employees'
20 regular rate of compensation in lieu thereof. To the extent any premiums were paid, they were
21 underpaid at the employees' base hourly rate. Employees were required to remain on-duty during
22 breaks or portions of their breaks, thus making them either untimely or shortened and on-duty,
23 and they were also prevented from leaving the premises during rest breaks under Defendants'
24 policies and practices. Rest period violations therefore arose in one or more of the following
25 manners:

- 26 (a) Class members were required to work without being provided a minimum
27 ten (10) minute rest period for every four (4) hours or major fraction thereof
28

1 worked and were not compensated one (1) hour of pay at their regular rate
2 of compensation for each workday that a rest period was not provided;

3 (b) Class members were not authorized and permitted to take timely rest periods
4 for every four hours worked, or major fraction thereof; and

5 (c) Class members were required to remain on-duty and under Defendants'
6 control during rest periods or otherwise had their rest periods interrupted by
7 work demands.

8 38. From at least four (4) years prior to the filing of this lawsuit and continuing to the
9 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
10 deducting the Employees' earned wages, including by the above described off the clock before
11 and after work shifts and by requiring rent payments from them. By not compensating Employees
12 for all hours worked and failure to pay for hours spent under Defendants' control, and by requiring
13 them to pay rent and threatening to deduct it from their wages if they failed to do so, Defendants
14 unlawfully deducted wages earned by and owed to Plaintiffs and the Class members, in violation
15 of Labor Code § 221.

16 39. As a result of the above described illegal policies and practices, Defendants engaged
17 in and enforced the following additional unlawful practices and policies against Plaintiffs and the
18 Class members they seek to represent:

- 19 a. failing to pay all wages owed to Class members who either were discharged, laid
20 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202,
21 203;
- 22 b. failing to pay all wages owed to the Class members twice monthly in accordance
23 with the requirements of Labor Code § 204;
- 24 c. failing to pay Class members all wages owed, including all meal and rest period
25 premium wages;
- 26 d. failing to maintain accurate records of Class members' earned wages and meal
27 periods in violation of Labor Code §§ 226 and 1174(d) and section 7 of the
28 applicable IWC Wage Orders; and

1 e. failing to produce timekeeping records in response to Plaintiffs' timely and lawful
2 request to receive them under these authorities.

3 40. From at least four years prior to the filing of this lawsuit, and continuing to the
4 present, Defendants have also consistently failed to provide Plaintiffs and the Class members with
5 timely, accurate, and itemized wage statements, in writing, as required by California wage-and-
6 hour laws, including by the above-described requirement of off the clock work, failure to pay all
7 overtime, and failure to pay premium wages for unprovided or otherwise unlawful meal and rest
8 breaks. Defendants have also made it difficult to account with precision for the unlawfully
9 withheld wages and meal and rest period compensation owed to Plaintiffs and the Class, during
10 the liability period, because they did not implement and preserve a record-keeping method as
11 required for non-exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of
12 the applicable California Wage Orders. Upon information and belief, time clock punches were not
13 maintained or were not accurately maintained for work shifts and meal periods, which were
14 automatically presumed by Defendants to have been lawfully provided when they were not.
15 Defendants also failed to accurately record and pay for all regular and overtime hours worked by
16 Plaintiffs and the Class members.

17 41. Defendants also provided Plaintiffs and the Class members with wage statements
18 that failed to accurately report all hours worked and applicable hourly rates for all hours worked,
19 or otherwise omitted the rates. The wage statements also failed to set forth the correct number
20 hours worked and the correct rates of pay when overtime premium wages were paid. Plaintiffs and
21 the Employees in the Class were unable to discern from their wage statements alone the actual
22 hours they worked in total during a pay period. Wage Statements issued to Plaintiff Phillips listed
23 FV Storm Group Inc. as the employer with an address in Atlanta, Georgia. Wage Statements
24 issued to Plaintiff Butler listed FV Storm Group Inc. as the employer with an address in Venice,
25 California, and upon information and belief issued similar statements to Plaintiff Thomas listing
26 the same Venice, California address. Wage statements were thus confusing as to who the actual
27 employer is and what address and contact should be used for it, in violation of Section 226(a).

1 42. The wage statements were also issued later then semi-monthly and anywhere from
2 two to three weeks after the relevant pay period. For example, Wage Statement issued to Plaintiff
3 Butler is for a pay period start date of November 27, 2022 and a pay period end date of December
4 3, 2022. However, the actual pay date when a check was cut and sent or provided to her lists the
5 pay date as December 23, 2022 in direct violation of Labor Code § 204. Wage Statements issued
6 by Defendants also failed to report any total number of pieces or sales made and a corresponding
7 payment in violation of Labor Code § 226.2 in the event Class members are deemed to be paid on
8 a piece rate basis.

9 43. Defendants have thus also failed to comply with Labor Code § 226(a) by issuing
10 wage statements that were untimely and inaccurately reported total hours worked and total wages
11 earned by Plaintiffs and the Class members, along with the appropriate applicable rates, among
12 others requirements. Plaintiffs and Class members are therefore entitled to penalties not to exceed
13 \$4,000.00 for each employee pursuant to Labor Code § 226(b). Defendants have also failed to
14 comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain
15 time records showing when the employee begins and ends each work period, meal periods, wages
16 earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage
17 statements all deductions from payment of wages and accurately reporting total hours worked by
18 the Class members.

19 44. Defendants also required Plaintiffs and the Class members to work hours off the
20 clock for which they were not compensated, including during interrupted or otherwise on-duty
21 meal and rest periods and pervasively before and after their shifts. Defendants also failed to pay all
22 overtime premium wages owed for work conducted on a work shift and a workday, as addressed
23 above. Therefore, from at least four years prior to filing this lawsuit and continuing to the present,
24 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to
25 Plaintiffs and other similarly situated Employees at the time of their termination or within seventy-
26 two (72) hours of their resignation, as required by California wage-and-hour laws. Defendants also
27 failed to pay all wages owed to Plaintiffs and the Class members at the time they were terminated
28 or otherwise separated from employment. In view of the above addressed violations, Defendants

1 have also failed to timely pay all wages owed to Plaintiffs and the Class members twice monthly
2 in accordance with the requirements of Labor Code § 204.

3 45. Additionally, from at least four years prior to the filing of this lawsuit and
4 continuing to the present, Defendants have regularly required Plaintiffs and the Class members to
5 incur necessary business expenses in the course of performing their required job duties. For
6 example, Plaintiffs were required to use their personal cellular phone to make and receive work-
7 related calls and messages, as well as take pictures with donors. Plaintiffs Butler and Thomas were
8 also required to purchase any materials needed such as tables, chairs, table decorations,
9 tablecloths, markers, whiteboards and clipboards. When Plaintiff Phillips did not have a ride, he
10 was required to incur bus fare to travel from home to the headquarters to different locations and
11 back again.

12 46. Defendants required Plaintiffs and the Class members to use their cellular phones
13 to conduct work related business and to receive scheduling and location assignments and complete
14 trainings and the like. Defendants also used the personal cellular phones for the Class members as
15 the primary means for contacting them both during and after work shifts regarding work
16 scheduling or other company specific business, and Plaintiffs and other similarly situated
17 employees were required to respond. This also prevented them from taking uninterrupted and
18 duty-free rest breaks and meal periods. Plaintiffs and the Class members therefore were often
19 required by Defendants to receive, review, and respond to work related cellular phone calls and
20 text messages when they were on-duty and off-duty, as detailed above. However, Defendants
21 failed to reimburse Plaintiffs and the Class members for any of their expenses related to their
22 personal cellular phones and data usage, or for any of the above addressed expenses. Plaintiffs
23 and the Class members must be reimbursed for these necessary business expenses under Labor
24 Code § 2802 and Defendants systematically and uniformly failed to do so.

25 47. In light of the foregoing, Plaintiffs and the Employees in the Class bring this action
26 pursuant to, *inter alia*, Labor Code §§ 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5, 206,
27 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.7,
28 226.8, 227.3, 245, 246, 246.5, 247, 247.5, 248, 248.5, 249, 256, 450, 510, 511, 512, 516, 550, 551,

552, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1197.2, 1197.5, 1198, 1198.5, 1199, 2802, 2926, and 2927, and 2698 *et seq.*, and the Wage Orders of the California Industrial Welfare Commission, California Code of Regulations, Title 8, section 11000 *et seq.*

48. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiffs and the Class members seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or fraudulent practices alleged in this Complaint.

CLASS ALLEGATIONS

49. 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 (or “the Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as determined by the Court (“the Class Period”), and who have been employed as non-exempt, hourly employees based out of Defendants’ offices within the State of California.” Further, Plaintiffs seek to represent the 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.

c. Subclass 3. Meal Period Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-free meal periods or one hour of pay at the Employee’s regular rate of compensation in lieu thereof.

d. Subclass 4. Rest Break Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction

thereof, and failing to pay one hour of pay at the Employee's regular rate of compensation in lieu thereof.

e. Subclass 5. Sick Pay Subclass. All Class members who were paid non-discretionary wages and sick pay during the same workweek.

f. Subclass 6. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

g. Subclass 7. Unauthorized Deductions from Wages Subclass. All Class members who were subject to Defendants' policy and/or practice of deducting wages earned from their pay, including by requiring off the clock work and rent payments.

h. Subclass 8. Failure to Timely Pay Wages Twice Monthly Subclass. All Class members who were subject to Defendants' policy and practice of not timely paying all wages earned when they were due and payable at least twice monthly.

i. Subclass 9. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

j. Subclass 10. Expense Reimbursement Subclass. All Class members who incurred necessary and reasonable expenses in connection with performing their job duties for Defendants and who were subject to a policy and/or practice under which such expenses were not reimbursed.

k. Subclass 11. UCL Subclass. All Class members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

50. Plaintiffs reserve the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or to provide further division into subclasses or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class against Defendants, the Class Period should be adjusted accordingly.

51. Defendants, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,

1 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
2 in a practice whereby Defendants failed to correctly calculate and pay compensation for the time
3 worked by Plaintiffs and the other members of the Class, even though Defendants enjoyed the
4 benefit of this work, required Employees to perform this work and permitted or suffered to permit
5 this work. Defendants have uniformly denied these Class members wages to which these
6 employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in
7 order to unfairly cheat the competition and unlawfully profit.

8 52. This action has been brought and may properly be maintained as a class action
9 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
10 of interest in this litigation and the proposed Class is easily ascertainable from the employment
11 records for Plaintiffs and the Class members that Defendants are required to maintain under
12 California law.

13 **A. Numerosity**

14 53. The potential members of the Class as defined are so numerous that joinder of all
15 the Class members is impracticable. While the precise number of Class member has not been
16 determined at this time, Plaintiffs are informed and believes that Defendants employ or, during the
17 time period relevant to this lawsuit employed, hundreds of Employees who satisfy the Class
18 definition within the State of California. Plaintiffs allege that Defendants' employment records
19 will provide information as to the number and location of all Class members.

20 **B. Commonality**

21 54. There are questions of law and fact common to the Class that predominate over any
22 questions affecting only individual Class members. The common questions are numerous and
23 substantial and flow from Defendants' uniform policies and/or practices of violating the California
24 Labor Code addressed above. As such, these common questions predominate over individual
25 questions concerning each individual Class Member's showing as to his or her eligibility for
26 recovery or as to the amount of damages. 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
2 Code § 510;
- 3 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
4 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
5 premium pay at the Employees' regular rate of compensation in lieu thereof;
- 6 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
7 Orders, by failing to authorize and permit Employees to take requisite rest breaks
8 or provide premium pay at the Employees' regular rate of compensation in lieu
9 thereof;
- 10 f. Whether Defendants violated Labor Code § 246 by failing to pay sick pay at the
11 correct rate of pay;
- 12 f. Whether Defendants violated Labor Code § 226(a) by providing Employees with
13 inaccurate wage statements;
- 14 g. Whether Defendants violated Labor Code § 221;
- 15 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
16 wages and compensation due and owing at the time of termination of employment;
- 17 i. Whether Defendants' conduct was willful;
- 18 j. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
19 Orders by failing to maintain accurate records of Class members' earned wages and
20 work periods;
- 21 k. Whether Defendants violated Labor Code § 1194 by failing to compensate all
22 Employees during the relevant time period for all hours worked, whether regular or
23 overtime;
- 24 l. Whether Defendants violated Labor Code § 204 by failing to pay Employees all
25 wages earned at least twice monthly;
- 26 m. Whether Defendants violated Labor Code § 2802 by failing reimburse necessary
27 business expenses incurred by Employees;
- 28 n. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

- 1 o. Whether Employees are entitled to equitable relief pursuant to Business and
2 Professions Code § 17200 *et seq.*

3 **C. Typicality**

4 55. The claims of the named Plaintiffs are typical of those of the other Employees. The
5 Employee Class members all sustained injuries and damages arising out of and caused by
6 Defendants' common course of conduct and uniformly applied policies in violation of statutes, as
7 well as regulations, that have the force and effect of law, as alleged herein. Plaintiffs' claims for
8 the off the clock work and meal and rest violations they were required to endure are typical of
9 those of the other Class members.

10 **D. Adequacy of Representation**

11 56. Plaintiffs will fairly and adequately represent and protect the interest of the
12 Employee Class members. Counsel who represents Plaintiffs and the Employees in the Class are
13 experienced and competent in litigating employment class actions.

14 **E. Superiority of Class Action**

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

20 58. As to the issues raised in this case, a class action is superior to all other methods for
21 the fair and efficient adjudication of this controversy, as joinder of all Class members is
22 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
23 members. Further, as the economic or other loss suffered by vast numbers of Class members may
24 be relatively small, the expense and burden of individual actions makes it difficult for the Class
25 members to individually redress the wrongs they have suffered. Moreover, in the event
26 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
27 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
28 managing this case as a class action, and proceeding on a class-wide basis will permit Employees

1 to vindicate their rights for violations they endured which they would otherwise be foreclosed
2 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

3 59. Class action treatment will allow those persons similarly situated to litigate their
4 claims in the manner that is most efficient and economical for the parties and the judicial system.
5 Plaintiffs are unaware of any difficulties in managing this case that should preclude class
6 treatment. Plaintiffs contemplate the eventual issuance of notice to the proposed Class members
7 that would set forth the subject and nature of the instant action. The Defendants' own business
8 records can be utilized for assistance in the preparation and issuance of the contemplated notices.
9 To the extent that any further notice is required additional media and/or mailings can be used.

10 60. Defendants, as prospective and actual employers of the Employees in the Class,
11 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
12 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
13 Employees as well as the effect of any alleged arbitration agreements that may have been forced
14 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
15 and policies, most notably intentionally refusing to pay for all hours actually worked which should
16 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
17 agreements and policies and practices on the Employees and Class as a whole.

18 61. Plaintiffs and the Employees in the Class did not discover the fact that they were
19 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
20 any discussion about Plaintiffs' and the Class's waiver of their Constitutional rights of trial by
21 jury, to collectively organize and oppose unlawful pay practices under California law as well as
22 obtain injunctive relief. As a result, the applicable statutes of limitation tolled until such time as
23 Plaintiffs and the Class members discovered their claims.

24 **FIRST CAUSE OF ACTION**
25 **FAILURE TO PAY MINIMUM WAGES**
26 **(Against All Defendants)**

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

1
2 63. Defendants failed to pay Employees minimum wages they were owed, including
3 by their consistent policy of failing to pay Employees for all hours worked. Employees would
4 work hours and not receive wages, including as alleged above in connection with off the clock
5 work, including all the time required to remain on duty and under Defendants' control and during
6 breaks and due to the work demands placed upon them by Defendants' management. Defendants
7 also imposed difficult to attain job and sales and shift scheduling requirements on Plaintiffs and
8 the Class members, which resulted in off the clock work and underpayment of all wages owed to
9 Employees over a period of time, while benefiting Defendants. During the relevant time period,
10 Defendants thus regularly failed to pay minimum wages to Plaintiffs and the Class members,
11 including by requiring systematic off the clock work. Defendants' uniform pattern of unlawful
12 wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a
13 result of implementing a uniform policy and practice that denied accurate compensation to
14 Plaintiffs and the other members of the Class as to minimum wage pay.

15 64. In California, employees must be paid at least the then applicable state minimum
16 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014,
17 and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H)
18 of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an
19 employee is subject to the control of an employer, and includes all the time the employee is
20 suffered or permitted to work, whether or not required to do so." Additionally, pursuant to
21 California Labor Code § 204, other applicable laws and regulations, and public policy, an
22 employer must timely pay its employees for all hours worked. Defendants failed to do so.

23 65. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
24 states: "The minimum wage for employees fixed by the commission is the minimum wage to be
25 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

26 66. The applicable minimum wage rate fixed by the commission for work during the
27 relevant period is found in the Wage Orders.
28

1 67. The minimum wage provisions of California Labor Code are enforceable by private
2 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
3 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
4 overtime compensation applicable to the employee is entitled to recover in a civil action the
5 unpaid balance of the full amount of this minimum wage or overtime compensation, including
6 interest thereon, reasonable attorney’s fees and costs of suit.”

7 68. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
8 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
9 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
10 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
11 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
12 the absence of a contractually agreed upon one. The underpayment of wages to Plaintiffs and the
13 Class members is and has been a direct consequence of Defendants’ unlawful compensation
14 policies and practices, which applied uniformly to the Class members working at locations
15 throughout California.

16 69. Defendants have failed to pay Plaintiff wages for all hours worked, and therefore
17 have failed to pay Plaintiff minimum wages for his labor and hours worked, as addressed in detail
18 herein. Defendant BARBOSA is also personally and individually liable pursuant to the provisions
19 of California Labor Code § 558.1 which permits liability of an owner, director, officer, or
20 managing agent of the employer who fails to pay the minimum wages required under the Wage
21 Orders. Defendant BARBOSA is also individually liable because he exercised economic and
22 operational control over Plaintiffs’ employment relationship and knew or should have known that
23 failing to pay Plaintiffs at least the minimum wage for all hours worked violated California’s wage
24 and hour laws.

25 70. In committing the above described violations of the California Labor Code,
26 Defendants inaccurately recorded, or required Plaintiffs and the Class members to input times that
27 did not reflect their actual hours worked, or calculated the correct time worked and consequently
28 underpaid the actual time worked by Plaintiffs and other members of the Class, including by

1 requiring off the clock work, as addressed in detail above. Defendants acted in an illegal attempt to
2 avoid the payment of all earned wages, and other benefits in violation of the California Labor
3 Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.
4 As a result of these violations, Defendants also failed to timely pay all wages earned in accordance
5 with California Labor Code § 1194.

6 71. California Labor Code § 1194.2 also provides for the following remedies: “In any
7 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
8 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
9 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

10 72. Additionally, Labor Code § 1197.1 provides that: “Any employer or other person
11 acting either individually or as an officer, agent, or employee of another person, who pays or
12 causes to be paid to any employee a wage less than the minimum fixed by an order of the
13 commission shall be subject to a civil penalty and restitution of wages payable to the employee...”
14 In addition to restitution for all unpaid wages, pursuant to California Labor Code § 1197.1,
15 Plaintiffs and Class members are entitled to recover a penalty of \$100.00 for the initial failure to
16 timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each
17 employee minimum wages. They are permitted to do so as well against Defendant BARBOSA
18 individually in light of his status as owner and manager of Defendant FV STORM GROUP, INC.
19 for failure to pay wages during the course of employment and under Section 203 for failing to pay
20 minimum wages for all hours worked at termination or resignation.

21 73. Pursuant to California Labor Code § 1194.2, Plaintiffs and Class members are
22 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
23 interest thereon.

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

27 75. Wherefore, Plaintiffs and the Employee Class members are entitled to recover the
28 unpaid minimum wages (including double minimum wages), liquidated damages in an amount

1 equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees
2 and costs of suit pursuant to California Labor Code § 1194(a). Plaintiffs and the other members of
3 the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs,
4 as well as the assessment of any statutory and/or civil penalties against Defendants, in a sum as
5 provided by the California Labor Code, including §§ 558 and 558.1 and 1197.1, and/or other
6 applicable statutes. To the extent minimum wage compensation is determined to be owed to the
7 Class members who have terminated their employment, Defendants' conduct also violates Labor
8 Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time
9 penalties under California Labor Code § 203, which penalties are sought herein on behalf of these
10 Class members. Defendants' failure to timely pay all wages owed also violated Labor Code § 204
11 for failure to pay all wages owed twice monthly, and resulted in violations of Labor Code § 226
12 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as
13 alleged herein was willful, intentional and not in good faith. Further, Plaintiffs and other Class
14 members are entitled to seek and recover statutory costs.

15 **SECOND CAUSE OF ACTION**

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

17 **(Against All Defendants)**

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

20 77. California Labor Code § 1194 provides that "any employee receiving less than the
21 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
22 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
23 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
24 may be maintained directly against the employer in an employee's name without first filing a
25 claim with the Division of Labor Standards and Enforcement.

26 78. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
27 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
28 Industrial Welfare Commission) by failing to pay Employees for all their hours worked, including:

1 (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a
2 workday or in excess of forty hours in any workweek or for the first eight hours worked on the
3 seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked
4 in excess of twelve hours in any one day or for hours worked in excess of eight hours on any
5 seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees
6 wages for all hours worked, including by requiring off the clock work as addressed above and by
7 under-reporting actual hours worked. With work shifts generally being scheduled for eight hours
8 or more, this unpaid off the clock work resulted in Plaintiffs and the Class members working past
9 eight hours on a shift, which required that they be paid at the correct overtime rate of 1.5 times
10 their regular rate.

11 79. Defendants thus had a consistent policy of not paying Employees wages for all
12 hours worked, including hours at their required regular, overtime, and double-time rates, and as
13 required under applicable living wage ordinances. Defendants required Plaintiffs and the Class
14 members to work off the clock to avoid paying all their earned and owed straight time and
15 overtime wages and other benefits, in violation of the California Labor Code, the California Code
16 of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor
17 Standards and Enforcement. Defendants have also violated these provisions by requiring Plaintiffs
18 and other similarly situated non-exempt employees to work through meal periods when they were
19 required to be clocked out or to otherwise work off the clock to complete their daily job duties or
20 to attend and participate in company required activities or remain under Defendants' control.
21 Therefore, Employees were not properly compensated, nor were they paid overtime rates for hours
22 worked in excess of eight hours in a given day, and/or forty hours in a given week. Based on
23 information and belief, Defendants did not make available to Employees a reasonable protocol for
24 correcting time records when Employees worked overtime hours or to fix incorrect time entries or
25 those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants also
26 under-paid Plaintiffs and the putative Class members all wages by systematically miscalculating
27 and underpaying overtime wages they earned, or not paying them at all. More specifically,
28 Defendants paid employees bonuses which were tied directly to the daily sales/donations

1 performance. Defendants failed to include the bonus payments for all regular hours worked in
2 their calculation of the applicable hourly rate used to pay overtime, and this uniformly applied
3 policy and practice resulted in systematic underpayment of overtime wages to Employees.

4 80. Defendants' failure to pay Plaintiffs and the Class members the unpaid balance of
5 regular wages owed and overtime compensation for all hours worked, as required by California
6 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
7 IWC Wage Order, and is therefore unlawful.

8 81. Additionally, Labor Code § 558(a) provides "any employer or other person acting
9 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
10 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
11 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
12 pay period for which the employee was underpaid in addition to an amount sufficient to recover
13 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
14 underpaid employee for each pay period for which the employee was underpaid in addition to an
15 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
16 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in
17 this section are in addition to any other civil or criminal penalty provided by law." Defendants
18 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
19 Wage Orders. Accordingly, Plaintiffs and the Class members seek the remedies set forth in Labor
20 Code § 558.

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

27 83. Defendant BARBOSA is also personally and individually liable pursuant to the
28 provisions of California Labor Code § 558.1 which permits liability of an owner, director,

1 officer, or managing agent of the employer who fails to pay the minimum wages required under
2 the Wage Orders. Defendant BARBOSA is also individually liable because he exercised
3 economic and operational control over Plaintiff's employment relationship and knew or should
4 have known that failing to pay Plaintiff at the required overtime hourly rate for all his overtime
5 hours worked violated California's wage and hour laws.

6 84. Plaintiffs and the Class members have been damaged by these violations of
7 California Labor Code §§ 204 and 510 (and the relevant orders of the Industrial Welfare
8 Commission). Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants
9 are subject to a fine of not less than \$100 for causing Employees "to work for longer hours than
10 those fixed, or under conditions of labor prohibited by an order of the commission" or if the
11 employer pays "a wage less than the minimum fixed by an order of the commission" or
12 "violates...any provision of this chapter or any order or ruling of the commission."

13 85. Consequently, pursuant to the California Labor Code, including Labor Code §§
14 204, 510, 558, 558.1, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage
15 Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for
16 the full amount of all their unpaid wages and overtime compensation for all their hours worked,
17 with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any
18 statutory penalties against Defendants, and each of them, and any additional sums as provided by
19 the Labor Code and/or other statutes.

20 **THIRD CAUSE OF ACTION**

21 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

22 **(Against All Defendants)**

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

25 87. Employees regularly worked shifts greater than five (5) hours and in most
26 instances, greater than ten (10) hours. Pursuant to Labor Code § 512, and paragraph 11 of the
27 applicable IWC Wage Order, an employer may not employ someone for a shift of more than five
28 (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or

1 for a shift of more than ten (10) hours without providing him or her with a second meal period of
2 not less than thirty (30) minutes.

3 88. Defendants failed to provide Employees with meal periods as required under the
4 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
5 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
6 provided them after Employees worked beyond the fifth hour of their shifts or Employees
7 otherwise had them shortened and interrupted by work demands and requirements to remain under
8 Defendants' control during off the clock time. Furthermore, upon information and belief, on the
9 occasions when Employees worked more than ten hours in a given shift, they did so without
10 receiving a second uninterrupted thirty minute meal period as required by law.

11 89. Defendants thus failed to provide Plaintiffs and the Class members with meal
12 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
13 including by not providing them with the opportunity to take meal breaks, by providing them late
14 or for less than thirty minutes, or by requiring them to perform work during breaks.

15 90. Moreover, Defendants failed to compensate Employees for each meal period not
16 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
17 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
18 employee a meal period in accordance with this section, the employer shall pay the employee one
19 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
20 period is not provided. Defendants failed to compensate the Employees in the Class for each meal
21 period not provided or inadequately provided, as required under Labor Code § 226.7 and
22 paragraphs 11 and 20 of the applicable IWC Wage Order.

23 91. Defendant BARBOSA is also personally and individually liable pursuant to the
24 provisions of California Labor Code § 558.1 which permits liability of an owner, director, officer,
25 or managing agent of the employer who fails to pay the minimum wages required under the Wage
26 Orders. Defendant BARBOSA is also individually liable because he exercised economic and
27 operational control over Plaintiffs' employment relationship and knew or should have known that
28 failing to provide Plaintiffs with lawful meal periods violated California's wage and hour laws.

92. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal to one hour of pay at their regular rate of compensation for each meal period not provided or deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and other statutes and applicable IWC Wage Order paragraphs.

FOURTH CAUSE OF ACTION

REST-BREAK LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

94. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that employers must authorize and permit all employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) work hours.

95. Employees consistently worked consecutive four (4) hour shifts and were generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift, and Defendants failed to provide Employees with timely rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Employees were often required to work or to otherwise remain under Defendants' control during rest periods, and had breaks provided untimely as a result of the above described off the clock work. Plaintiffs and the Class members were also not permitted to leave their work premises during rest breaks.

96. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders provide that if an employer fails to provide an employee rest period in accordance with this section, 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.

1 97. Defendants, and each of them, have therefore intentionally and improperly denied
2 rest periods to Plaintiffs and the Class members in violation of Labor Code §§ 226.7 and 512 and
3 paragraph 12 of the applicable IWC Wage Orders.

4 98. Defendants failed to authorize and permit Plaintiffs and the Class members to take
5 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
6 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
7 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
8 12 and 20 of the applicable IWC Wage Orders.

9 99. Defendant BARBOSA is also personally and individually liable pursuant to the
10 provisions of California Labor Code § 558.1 which permits liability of an owner, director, officer,
11 or managing agent of the employer who fails to pay the minimum wages required under the Wage
12 Orders. Defendant BARBOSA is also individually liable because he exercised economic and
13 operational control over Plaintiffs' employment relationship and knew or should have known that
14 failing to authorize and permit Plaintiffs to take lawful rest breaks violated California's wage and
15 hour laws.

16 100. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
17 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one (1)
18 hour of pay at their regular rate of compensation for each day worked without the required rest
19 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
20 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

21 **FIFTH CAUSE OF ACTION**
22 **VIOLATION OF LABOR CODE § 246**
23 **(Against All Defendants)**

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

26 102. Pursuant to Labor Code § 246, an employee is entitled to receive sick time pay.
27 For non-exempt employees, employers are to calculate paid sick leave in the same manner as the
28 regular rate of pay for the workweek in which the employee uses paid sick time, whether or not

1 the employee actually works overtime in that workweek; or by dividing the employee's total
2 wages, not including overtime premium pay, by the employee's total hours worked in the full pay
3 periods of the prior 90 days of employment.

4 103. Defendants either failed to pay sick pay or else paid sick pay to Plaintiffs and the
5 similarly situated Class Members at the incorrect rate of pay. To the extent Defendants paid sick
6 pay at the base hourly rate of pay, instead of the regular rate of pay, which would take into account
7 all non-discretionary wages, they committed further Labor Code violations. Defendants payments
8 of sick pay at the base hourly rate of pay resulted in the underpayment of sick time.

9 104. Defendants' failure to pay sick pay in the proper amount also constituted violations
10 of California Labor Code §§ 201-204.

11 105. Employees have been damaged by these violations of the California Labor Code.
12 Consequently, pursuant to the California Labor Code, including Labor Code §§ 201-204,
13 Defendants are liable to Employees for the full amount of all their unpaid sick pay, with interest,
14 plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties
15 against Defendants, and each of them, and any additional sums as provided by the Labor Code
16 and/or other statutes.

17 **SIXTH CAUSE OF ACTION**
18 **VIOLATION OF LABOR CODE § 226(a)**
19 **(Against All Defendants)**

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

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

1 108. Defendants failed to provide Plaintiffs and the similarly situated Employee Class
2 members with accurate itemized wage statements in writing, as required by the Labor Code and
3 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to
4 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
5 including by failing to pay for all hours worked, failure to pay for all overtime hours worked and
6 for providing deficient meal periods and rest breaks, all of which Defendants knew or reasonably
7 should have known were owed to the Employees, as alleged above. They were also confusing as to
8 the identity and address of the employer, and Defendants policy of paying two weeks in arrears
9 directly violates Sections 204 and 226(a).

10 109. Defendants also provided Plaintiffs and the Class members with wage statements
11 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
12 Plaintiffs and the Employees in the Class were unable to discern from their wage statements along
13 the actual hours they worked in total during a pay period.

14 110. Throughout the liability period, Defendants intentionally failed to timely furnish to
15 Plaintiffs and the Class members, upon each payment of wages, itemized statements accurately
16 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
17 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net
18 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
19 the employee and only the last four digits of his or her social security number or an employee
20 identification number other than a social security number, (8) the name and address of the legal
21 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
22 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
23 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory
24 requirements. Defendants knowingly and intentionally failed to provide Plaintiffs and the Class
25 members with such timely and accurate wage and hour statements.

26 111. Plaintiffs and the Class members suffered injury as a result of Defendants'
27 knowing and intentional failure to provide them with the wage and hour statements as required by
28 law and are presumed to have suffered injury and entitled to penalties under Labor Code §

226(e), as the Defendants have failed to provide an accurate wage statement, failed to provide accurate and complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and the Plaintiffs and Class members cannot promptly and easily determine from the wage statement alone one or more of the following: (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period, (iii) The name and address of the employer and, (iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number. For purposes of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an objective standard] would be able to readily ascertain the information without reference to other documents or information.

112. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers are required “to pay each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Plaintiffs and the Class members may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders.

113. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the Class suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

114. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable IWC Wage Order, Plaintiffs and the Employee Class members are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) under Section 226(e), and are entitled to recover further penalties pursuant to paragraphs 4(B) and 20 of the applicable IWC Wage Orders. They are also entitled to an award of costs and reasonable attorneys' fees.

SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 221
(Against All Defendants)

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

116. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

117. Defendants unlawfully received and/or collected wages from the Employees in the Class by implementing a policy understating the hours worked by Employees by requiring off the clock work and by automatically deducting time and by requiring Employees to pay rent and/or deducting it from weekly pay, as alleged above.

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

EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 204
(Against All Defendants)

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

120. Labor Code § 204 instructs that: “All wages, ...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Additionally, the requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.” As detailed above, Defendants followed the unlawful practice of paying Plaintiff and the Class members two weeks in arrears. Defendants thus maintained a consistently applied policy and practice of not paying all wages earned between the 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned between the 16th and the last day of the month between the 1st and 10th day of the following month. This included failing to pay all wages due and owing to Plaintiffs and the Class members for all hours they worked and failing to pay all wages earned by not more than seven calendar days following the close of the payroll period.

121. All wages due and owing to Plaintiffs and the Class members, including as required under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages required by Labor Code § 1194 and other sections became due and payable to each employee in each pay period that he or she was not provided with a meal period or rest period or paid straight or overtime wages to which he or she was entitled.

122. Defendants violated Labor Code § 204 by systematically refusing to timely pay wages due under the Labor Code, as addressed above. Defendants also failed to pay sick pay at the correct rate of pay, which lead to the underpayment of sick time. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers are required “to pay each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of

labor prohibited by the order is unlawful.” Plaintiffs and the Class members may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders.

123. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to represent have been deprived of wages in amounts to be determined at trial, and they are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs, pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the applicable IWC Wage Orders.

NINTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 203
(Against All Defendants)

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

125. Plaintiffs and numerous Class members are no longer employed by Defendants; they either quit Defendants’ employ or were fired therefrom. Defendants failed to pay these Employees all wages due at the time of termination or within seventy-two hours of resignation, as addressed in detail above. The wages withheld from these Employees by Defendants remained due and owing for more than thirty days from the date of separation from employment.

126. Defendants failed to pay Plaintiffs and the Class members without abatement, all wages as defined by applicable California law. Among other things, these Employees were not paid all regular and overtime wages, including by Defendants failing to pay for all hours worked or requiring off the clock work or by unlawfully under-recording time entries or by paying sick pay at the incorrect rate of pay to the detriment of Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as further detailed in this Complaint. Defendants’ failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

127. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers are required “to pay each employee, on the established payday for the period involved, not less

1 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
2 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
3 or under conditions of labor prohibited by the order is unlawful.” Plaintiffs and the Class members
4 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
5 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
6 IWC Wage Orders. Also, under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants
7 are subject to a fine of not less than \$100 for causing Employees “to work for longer hours than
8 those fixed, or under conditions of labor prohibited by an order of the commission” or if the
9 employer pays “a wage less than the minimum fixed by an order of the commission” or
10 “violates...any provision of this chapter or any order or ruling of the commission.”

11 128. Defendant BARBOSA is also personally and individually liable pursuant to the
12 provisions of California Labor Code § 558.1 which permits liability of an owner, director, officer,
13 or managing agent of the employer who fails to pay the minimum wages required under the Wage
14 Orders. Defendant BARBOSA is also individually liable because he exercised economic and
15 operational control over Plaintiffs’ employment relationship and knew or should have known that
16 failing to pay Plaintiffs all wages owed at termination violated California’s wage and hour laws.
17 As addressed above, Defendant BARBOSA is also liable for statutory penalties in accordance
18 with Labor Code § 203 and other penalties as articulated under Labor Code § 1197.1.

19 129. Defendants’ failure to pay wages, as alleged, entitles Plaintiffs and these former
20 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of
21 the IWC Wage Orders as addressed above, including the requirement that an employee’s wages
22 shall continue until paid for up to thirty (30) days from the date they were due.

23 **TENTH CAUSE OF ACTION**

24 **FOR FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

25 **UNDER LABOR CODE § 2802**

26 **(Against All Defendants)**

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

1 131. Plaintiffs and the Class are informed and believe and based thereon allege that
2 throughout the period applicable, Defendants required Plaintiffs and the Class members to pay for
3 necessary work related expenses they incurred. Defendants required Plaintiff and the Class
4 members to use their cellular phones to conduct work related business and to receive scheduling
5 and location assignments. Defendants also used the personal cellular phones for the Class
6 members as the primary means for contacting them both during and after work shifts regarding
7 work scheduling or other company specific business, and Plaintiffs and other similarly situated
8 employees were required to respond. This also prevented them from taking uninterrupted and
9 duty-free rest breaks and meal periods. Plaintiffs and the Class members were also required to
10 purchase materials and supplies for making their sales presentations and for completing required
11 paperwork necessary for performing their job duties, and Defendants reimbursed none of them.

12 132. Defendants thus followed a uniform policy and practice of failing to reimburse
13 Employees for these necessary work related expenses or losses incurred in direct discharge of their
14 job duties during employment with Defendants and at the direction of the Defendants pursuant to
15 Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

16 133. Defendants' knowing and willful failure to reimburse lawful necessary work related
17 expenses and losses to Plaintiffs and the Class members resulted in damages because, among other
18 things, Defendants did not inform employees of their right to be reimbursed for those work related
19 expenses. As Defendants failed to inform and misled Plaintiffs and the Class members with regard
20 to their rights, Plaintiffs and the Class members were led to believe that incurring those lawful and
21 necessary expenses was an expected and essential function of their employment with Defendants
22 and that failure to incur those expenses would have adverse consequences on their employment.

23 134. Defendant BARBOSA is also personally and individually liable pursuant to the
24 provisions of California Labor Code § 558.1 which permits liability of an owner, director, officer,
25 or managing agent of the employer who fails to pay the minimum wages required under the Wage
26 Orders. Defendant BARBOSA is also individually liable because he exercised economic and
27 operational control over Plaintiffs' employment relationship and knew or should have known that
28 failing to reimburse Plaintiffs for expenses incurred in the course of performing their job duties

1 violated California's wage and hour laws.

2 135. Therefore, Plaintiffs and the Class members are entitled to reimbursement for any
3 and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9
4 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while
5 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed
6 from the date Plaintiffs and the Class members incurred those expenses. Further, Plaintiffs and the
7 Class members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

8 **ELEVENTH CAUSE OF ACTION**
9 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***
10 **(Against All Defendants)**

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

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

18 138. Plaintiffs are "persons" within the meaning of Business & Professions Code
19 § 17204, have suffered injury, and therefore have standing to bring this cause of action for
20 injunctive relief, restitution, and other appropriate equitable relief.

21 139. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
22 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
23 fraudulent in that Defendants' policy and practice failed to provide the required amount of
24 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiffs and
25 Class members for all hours worked, due to systematic business practices as alleged herein that
26 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
27 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
28 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California

1 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

2 140. Wage-and-hour laws express fundamental public policies. Paying employees their
3 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
4 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
5 vigorously to enforce minimum labor standards, to ensure that employees are not required or
6 permitted to work under substandard and unlawful conditions, and to protect law-abiding
7 employers and their employees from competitors who lower costs to themselves by failing to
8 comply with minimum labor standards.

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

15 142. Defendants' conduct, as alleged above, constitutes unfair competition in violation
16 of the Business & Professions Code § 17200 *et seq.*

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

21 144. By the conduct alleged herein, Defendants have engaged and continue to engage in
22 a business practice which violates California and federal law, including but not limited to, the
23 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
24 Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this Court
25 should issue declaratory and other equitable relief pursuant to California Business & Professions
26 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
27 competition, including restitution of wages wrongfully withheld.

28

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

3 146. Unless restrained by this Court, Defendants will continue to engage in the unlawful
4 conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make
5 such orders or judgments, including the appointment of a receiver, as may be necessary to prevent
6 the use by Defendants or their agents or employees of any unlawful or deceptive practice
7 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
8 such profits as may be necessary to restore the money Defendants have unlawfully failed to pay.

9 **TWELFTH CAUSE OF ACTION**

10 **PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.***

11 **(Against All Defendants)**

12 147. Plaintiff realleges and incorporate all preceding paragraphs, as though set forth in
13 full herein.

14 148. Plaintiff and the Employees in the Class are also aggrieved employees as defined
15 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and
16 either were or are employed by Defendants (“Aggrieved Employees”) during the relevant time
17 period.

18 149. In failing to pay Aggrieved Employees minimum wages and overtime, not
19 providing proper meal and rest periods, failing to provide accurate itemized wage statements, and
20 failing to pay Employees wages upon termination or timely upon resignation, all discussed above,
21 Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required
22 under Labor Code § 204. Defendants also failed to maintain records showing accurate hours
23 worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and
24 paragraph 7 of the applicable IWC Wage Orders.

25 150. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
26 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5,
27 including the penalty provisions, without limitation, based, inter alia, on the following California
28 Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512, 558, 1174,

1 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 *et seq.*

2 151. More specifically, after complying with the notice procedures of Labor Code §
3 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
4 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
5 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
6 including as follows:

7 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
8 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
9 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
10 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
11 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
12 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
13 to Labor Code § 2699(g)(1);

14 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
15 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
16 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
17 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
18 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
19 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
20 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
21 pursuant to Labor Code § 2699(g)(1);

22 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
23 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
24 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
25 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
26 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
27 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
28 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by

1 providing inaccurate wage statements and failing to maintain records as required under Labor
2 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
3 Code §226.3, which in addition to other penalties provided by law, subjects Defendants to “a
4 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
5 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
6 citation, ...”;

7 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
8 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
9 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
10 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
11 of the applicable IWC Wage Orders, and also for attorneys’ fees and costs pursuant to Labor Code
12 § 2699(g)(1);

13 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
14 Defendants’ unlawful deductions from wages and for Defendants’ failure to reimburse the
15 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
16 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
17 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
18 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys’ fees and costs
19 pursuant to Labor Code § 2699(g)(1);

20 (f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For
21 Defendants’ failure to provide and pay for Employees with all their required and earned sick days
22 and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2,
23 and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1,
24 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees and
25 costs pursuant to Labor Code § 2699(g)(1);

26 (g) All Alleged Violations of the IWC Wage Orders and Other Labor Code
27 Sections: For any above addressed violation of the applicable provisions of the IWC Wage
28 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §

2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

152. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also seeks the penalties and remedies set forth in Labor Code § 558, which states

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

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

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

153. Plaintiffs have exhausted their administrative remedies by submitting a certified letter to the LWDA and Defendants on June 14, 2023 (LWDA Case No. LWDA-CM-961977-23) addressing in detail the specific provisions of the Labor Code Defendants have violated and addressing the facts and legal theories to support the alleged violations and requested penalties. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the postmark date of the letter, and Plaintiffs add this claim seeking penalties under the PAGA for the violations addressed herein and in the PAGA Notice letter and the original Complaint.

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

1 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
2 the filing of this action, as may be proven;

3 3. For liquidated damages in the amount equal to the unpaid minimum wage and
4 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;

5 4. For compensatory damages in the amount of all unpaid wages, including overtime
6 and double-time pay, as may be proven;

7 5. For compensatory damages in the amount of the regular rate of compensation made
8 by Employees for each missed or deficient meal period where no premium pay was paid therefor
9 from four (4) years prior to the filing of this action, as may be proven;

10 6. For compensatory damages in the amount of the regular rate of compensation made
11 by Employees for each day requisite rest breaks were not provided or were deficiently provided
12 where no premium pay was paid therefor from at least four (4) years prior to the filing of this
13 action, as may be proven;

14 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

15 8. For restitution and/or damages and penalties for Defendants' failure to pay all
16 wages due twice monthly under Labor Code § 204, as may be proven;

17 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
18 for all class members in violation of Labor Code § 221, as may be proven;

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

21 11. For damages and restitution for failure to reimburse all reasonable and necessary
22 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

23 12. For liquidated damages pursuant to California Labor Code 1194.2(a) for failure to
24 pay minimum wage;

25 13. For restitution for unfair competition pursuant to Business & Professions Code
26 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

27 14. For an order enjoining Defendants and their agents, servants, and employees, and
28 all persons acting under, in concert with, or for them, from acting in derogation of any rights or

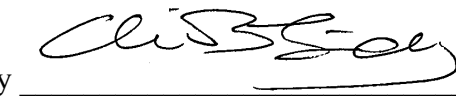
1 duties adumbrated in this Complaint;

- 2 15. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;
- 3 16. For penalties under Labor Code § 558, as may be proven;
- 4 17. For other wages and penalties under the Labor Code as may be proven;
- 5 18. For all general, special, and incidental damages as may be proven;
- 6 19. For an award of pre-judgment and post-judgment interest;
- 7 20. For an award providing for the payment of the costs of this suit;
- 8 21. For an award of attorneys' fees; and
- 9 22. For such other and further relief as this Court may deem proper and just.

10
11 DATED: August 21, 2023

DAVID YEREMIAN & ASSOCIATES, INC.

12
13 By



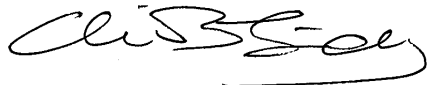
14 David Yeremian
15 Alvin B. Lindsay
16 Attorneys for Plaintiffs TAHIRHA
17 BUTLER, ISAAH BERRY PHILLIPS, and
18 NAKYA THOMAS on behalf of
19 themselves and all others similarly situated
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DEMAND FOR JURY TRIAL

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

DATED: August 21, 2023

DAVID YEREMIAN & ASSOCIATES, INC.

By 
David Yeremian
Alvin B. Lindsay
Attorneys for Plaintiffs TAHIRHA
BUTLER, ISAIAH BERRY PHILLIPS, and
NAKYA THOMAS on behalf of
themselves and all others similarly situated

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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 2540 Foothill Blvd., Ste 201, La Crescenta, CA 91214.

FV Storm Group, Inc.
901 W Civic Center Dr., #300
Santa Ana, CA 92703

Igor Barbosa
901 W Civic Center Dr., #300
Santa Ana, CA 92703

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at La Crescenta, California. I am “readily familiar” with this firm’s practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day 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.

☐ **(BY ELECTRONIC TRANSMISSION)** by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

[] (BY PERSONAL SERVICE) I personally delivered said envelope to the office of the person and address identified on the attached service list.

[] **(BY FACSIMILE)** On _____ before 5:00 p.m., I transmitted such documents from our facsimile machine number (818) 230-0308 to the person(s) at the facsimile numbers listed on the attached service list. Said transmission was reported as complete and without error. A copy of the transmission report which was properly issued by the transmitting facsimile machine is attached hereto.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 23, 2023, at La Crescenta, California.

Natalia Bermudes
Natalia Bermudes