

David Alami (State Bar No. 314628)
david@alamilawgroup.com
Shaheen Anthony Etemadi (State Bar No. 319138)
shawn@alamilawgroup.com
ALAMI LAW GROUP
620 Newport Center Drive, Suite 1100
Newport Beach, CA 92660
Telephone: (949) 287-3594

Attorneys for Plaintiff MARIA VILMA ARGUETA

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
10/17/2023 at 06:30:51 PM
Clerk of the Superior Court
By Irma Ledesma, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

MARIA VILMA ARGUETA, individually,
and on behalf of others similarly situated,
and all other aggrieved employees,

Plaintiff,

v.

ODYSSEY HEALTHCARE OPERATING
A, L.P.; ODYSSEY HEALTHCARE
MANAGEMENT, L.P.; ODYSSEY
HEALTHCARE LP, LLC; ODYSSEY
HEALTHCARE GP, LLC;
CENTERWELL HEALTH SERVICES
(USA), LLC; CENTERWELL
CERTIFIED HEALTHCARE CORP.; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00045150-CU-OE-NC

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Failure to Pay All Wages;
2. Failure to Provide Meal Periods or Compensation in Lieu Thereof;
3. Failure to Permit Rest Periods or Provide Compensation in Lieu Thereof;
4. Failure to Provide Accurate Itemized Wage Statements;
5. Waiting Time Penalties;
6. Failure to Reimburse Business Expenses;
7. Violations of the Unfair Competition Law; and
8. Violations of the Private Attorneys General Act of 2004

JURY TRIAL DEMANDED

1 Plaintiff MARIA VILMA ARGUETA (“Plaintiff”), individually, and on behalf of others
2 similarly situated, other aggrieved employees, and other State of California hereby brings this Class
3 and Representative Action Complaint (“Complaint”) against Defendants ODYSSEY
4 HEALTHCARE OPERATING A, L.P.; ODYSSEY HEALTHCARE MANAGEMENT, L.P.;
5 ODYSSEY HEALTHCARE LP, LLC; ODYSSEY HEALTHCARE GP, LLC; CENTERWELL
6 HEALTH SERVICES (USA), LLC; CENTERWELL CERTIFIED HEALTHCARE CORP.; and
7 DOES 1 through 50, inclusive (collectively, “Defendants”), and alleges with knowledge with
8 respect to her own acts and on information and belief as to other matters as follows:

9 **INTRODUCTION**

10 1. Defendants provide a number of healthcare services such as hospice care, including
11 pain and symptom management, emotional support, spiritual care, respite care, and bereavement
12 care, palliative care, and personal care.

13 2. This proposed class action, pursuant to California Code of Civil Procedure section
14 382, is brought by Plaintiff individually and on behalf of all current and former non-exempt
15 employees employed by Defendants in California during the Class Period (collectively the “Class”
16 or “Class Members”). The term Class Period is defined as four (4) years, plus the tolled statutory
17 period¹, prior to the filing of this action to the date of class certification.

18 3. Plaintiff also brings this representative action pursuant to the Private Attorneys
19 General Act of 2004, Labor Code sections 2698 et seq. (“PAGA”), against Defendants, on behalf
20 of herself individually and other aggrieved employees who are and were employed by Defendants
21 as non-exempt employees throughout California during the PAGA Period (the “aggrieved
22 employees”). The term PAGA Period is defined as one (1) year prior to Plaintiff’s initial notice of
23 Labor Code violations to the Labor and Workforce Development Agency (“LWDA”) and
24 Defendants until judgment.

25 4. This proposed class and representative action seeks, *inter alia*, unpaid wages
26 (including sick pay, vacation pay, minimum, regular, overtime, and double time wages),
27

28 ¹ Emergency Rule 9 provides: “Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.”

1 compensation for non-compliant meal periods and rest breaks, waiting time penalties, itemized
2 wage statement penalties, civil penalties, business expense reimbursements, liquidated damages,
3 interest, reasonable attorneys' fees, and costs. Plaintiff's action is brought under, *inter alia*, the
4 California Industrial Welfare Commission ("IWC") Wage Orders and applicable provisions of the
5 California Code of Regulations, California Business & Professions Code sections 17200 *et seq.*,
6 California Civil Code section 3289, California Code of Civil Procedure section 1021.5, and
7 California Labor Code ("Labor Code") sections 200, 201, 202, 203, 204, 206, 210, 218.6, 221, 223,
8 224, 226, 226.3, 226.7, 227.3, 233, 234, 246, 500, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12,
9 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800, 2802, and 2804.

10 5. Under the California Unfair Competition Law, Business and Professions Code
11 sections 17200 *et seq.* ("UCL"), and pursuant to the class action procedures provided for in this
12 statute, Plaintiff, on behalf of herself and the proposed Class, seeks declaratory relief, injunctive
13 relief, and restitution of all benefits Defendants have received from their employees due to their
14 unlawful business practices, including but not limited to, their failure to timely provide sick pay,
15 vacation pay, and minimum, regular, overtime, and double time compensation due for all hours
16 worked during and upon separation of employment, failure to reimburse business expenses, failure
17 to provide compliant meal periods and rest breaks to their employees or compensation in lieu
18 thereof, and failure to provide accurate itemized wage statements.

19 6. Plaintiff also brings this representative action pursuant to the Private Attorneys
20 General Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA"), against Defendants, on behalf
21 of herself individually and other aggrieved employees who are and were employed by Defendants
22 as non-exempt employees throughout California during the PAGA Period (the "aggrieved
23 employees"). The term PAGA Period is defined as one (1) year prior to Plaintiff's initial notice of
24 Labor Code violations to the Labor and Workforce Development Agency ("LWDA") and
25 Defendants until judgment

26 **JURISDICTION AND VENUE**

27 7. This Court has jurisdiction over all causes of action asserted herein pursuant to the
28 California Constitution, Article VI, section 10, which grants the Superior Court original jurisdiction

1 in all cases except those given to other trial courts. All claims alleged herein arise under California
2 law for which Plaintiff seeks relief authorized by California law. Further, this is a class action
3 pursuant to California Code of Civil Procedure section 382 and representative action under PAGA.
4 As such, the monetary damages, restitution, penalties, and other amounts sought by Plaintiff
5 exceeds the minimal jurisdictional limits of the Superior Court and will be established according to
6 proof at trial. The Court also has jurisdiction over certain causes of action pursuant to California
7 Business & Professions Code sections 17203 and 17204, which provide for exclusive jurisdiction
8 for enforcement of this statute in any court of competent jurisdiction.

9 8. This Court has jurisdiction over all Defendants because each Defendant is a citizen
10 of California, a corporation or association organized under the laws of the State of California, an
11 association authorized to do business in California and registered with the California Secretary of
12 State, does sufficient business in California, has sufficient minimum contacts with California,
13 and/or intentionally avails itself of the laws and markets of California through the promotion, sale,
14 marketing and distribution of its products and/or services in California to render the exercise of
15 jurisdiction by the California courts permissible.

16 9. Venue in this County is proper under California Business & Professions Code
17 section 17203 and California Code of Civil Procedure section 395.5 because a substantial part of
18 Defendants' unlawful conduct, acts, and omissions alleged herein occurred in this County,
19 Defendants conduct substantial business in this County, Defendants' liability arose in this County,
20 and/or Defendants reside, transact business, maintain offices, and/or have an agent or agents in this
21 County. The relief requested is within the jurisdiction of this Court.

22 **PARTIES**

23 10. Plaintiff is an individual who resides in California. Defendants employed Plaintiff
24 as a non-exempt hourly employee during the Class Period and Plaintiff's employment with
25 Defendants ended within one (1) year of the filing of this action. Plaintiff's job duties included,
26 *inter alia*, general hospice care services, including but not limited to home help aide services.

27 11. Plaintiff is informed, believes and thereon alleges that, at all relevant times,
28 ODYSSEY HEALTHCARE OPERATING A, L.P. was and is a Delaware limited partnership.

1 Plaintiff is informed, believes and thereon alleges that, at all relevant times, ODYSSEY
2 HEALTHCARE OPERATING A, L.P. was and is an employer subject to California state wage
3 and hour laws. Plaintiff is informed, believes, and thereon alleges that the practices and policies of
4 ODYSSEY HEALTHCARE OPERATING A, L.P. that are complained of by way of this
5 Complaint were implemented during the Class Period.

6 12. Plaintiff is informed, believes and thereon alleges that, at all relevant times,
7 ODYSSEY HEALTHCARE MANAGEMENT, L.P. was and is a Delaware limited partnership.
8 Plaintiff is informed, believes and thereon alleges that, at all relevant times, ODYSSEY
9 HEALTHCARE MANAGEMENT, L.P. was and is an employer subject to California state wage
10 and hour laws. Plaintiff is informed, believes, and thereon alleges that the practices and policies of
11 ODYSSEY HEALTHCARE MANAGEMENT, L.P. that are complained of by way of this
12 Complaint were implemented during the Class Period.

13 13. Plaintiff is informed, believes and thereon alleges that, at all relevant times,
14 ODYSSEY HEALTHCARE GP, LLC was and is a Delaware limited liability company. Plaintiff
15 is informed, believes and thereon alleges that, at all relevant times, ODYSSEY HEALTHCARE
16 GP, LLC was and is an employer subject to California state wage and hour laws. Plaintiff is
17 informed, believes, and thereon alleges that the practices and policies of ODYSSEY
18 HEALTHCARE GP, LLC that are complained of by way of this Complaint were implemented
19 during the Class Period.

20 14. Plaintiff is informed, believes and thereon alleges that, at all relevant times,
21 CENTERWELL HEALTH SERVICES (USA), LLC was and is a Delaware limited liability
22 company. Plaintiff is informed, believes and thereon alleges that, at all relevant times,
23 CENTERWELL HEALTH SERVICES (USA), LLC was and is an employer subject to California
24 state wage and hour laws. Plaintiff is informed, believes, and thereon alleges that the practices and
25 policies of CENTERWELL HEALTH SERVICES (USA), LLC that are complained of by way of
26 this Complaint were implemented during the Class Period.

27 15. Plaintiff is informed, believes and thereon alleges that, at all relevant times,
28 CENTERWELL CERTIFIED HEALTHCARE CORP. was and is a Delaware corporation. Plaintiff

1 is informed, believes and thereon alleges that, at all relevant times, CENTERWELL CERTIFIED
2 HEALTHCARE CORP. was and is an employer subject to California state wage and hour laws.
3 Plaintiff is informed, believes, and thereon alleges that the practices and policies of
4 CENTERWELL CERTIFIED HEALTHCARE CORP. that are complained of by way of this
5 Complaint were implemented during the Class Period.

6 16. Plaintiff is informed, believes and based thereon alleges that Defendants suffered
7 and permitted Plaintiff and Class Members to work, and/or jointly exercised control over the wages,
8 hours, and/or working conditions of Plaintiff and the Class Members.

9 17. Defendants continue to employ non-exempt employees within California.

10 18. Plaintiff is unaware of the true names and capacities of those defendants identified
11 as DOES 1 through 50. Therefore, Plaintiff identifies those defendants fictitiously. Plaintiff is
12 informed, believes and thereon alleges that at all relevant times each DOE defendant was a parent,
13 sister, or related corporate entity of defendants, or an owner, employee or agent of defendants, and
14 each related entity, and was acting with the knowledge and authorization of each of the other
15 defendants. Plaintiff will seek to amend this FAC to allege the true names and capacities of each
16 DOE defendant when their names have been ascertained and identified. Plaintiff is informed,
17 believes and thereon alleges that each of the defendants sued as DOES 1 through 50 participated
18 in, received the benefit of, or was in some way responsible for one or more of the wrongful acts
19 and omissions and some portion of the damages alleged herein.

20 19. Plaintiff is informed, believes and thereon alleges that at all times material hereto,
21 each defendant acted in all respects pertinent to this action as the agent of the other defendant,
22 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
23 each defendant are legally attributable to the other defendant. Furthermore, defendants in all
24 respects acted as the employer and/or joint employer of Plaintiff and the Class Members.

25 20. Plaintiff is informed, believes and thereon alleges that Defendants, each and all of
26 them, at all times material hereto, were the joint employers, parent companies, successor
27 companies, predecessors in interest, affiliates, agents, employees, servants, joint venturers,
28 directors, fiduciaries, representatives, and/or co-conspirators of each of the remaining defendants.

Defendants, unless otherwise alleged, at all times material hereto, performed all acts and omissions alleged herein within the course and scope of said relationship(s), and are a proximate cause of Plaintiff's damages as herein alleged.

21. Plaintiff is informed, believes and thereon alleges, that there exists a unity of interest in ownership between Defendants and DOES 1 through 50, inclusive, such that any individuality and separateness between the individual and the corporation does not exist, as Defendants, and DOES 1 through 50, inclusive, are alter egos, in that: (1) Defendants are and at all times mentioned herein were mere shells, instrumentalities and conduits through which DOES 1 through 50, inclusive, carried out their business in the business name, exercising complete control and dominance over such business; (2) that Defendants were conceived, intended and used by DOES 1 through 50, inclusive, as devices to avoid individual liability and in place of Defendants, and DOES 1 through 50, inclusive, and were without the financial solvency and responsibility required by law; and (3) that all of the assets of the Defendants have been transferred to DOES 1 through 50, inclusive, or some other individual or entity which he or she owns or controls, with the intent to hinder, delay or defraud creditors of Defendants, leaving Defendants with no assets. Further, Plaintiff is informed, believes and thereon alleges, that there exists a principal-agency relationship between and among Defendants.

22. At all relevant times herein, Defendants were agents of each other and acting within the course and scope of their agency.

CLASS ACTION ALLEGATIONS AND FACTUAL BACKGROUND

23. Pursuant to California Code of Civil Procedure section 382, Plaintiff brings this action individually and as a class action on behalf of a proposed Class defined as follows:

Class:

All current and former non-exempt employees employed by Defendants in the State of California within four (4) years prior to the commencement of this action, plus the tolled statutory period under Emergency Rule 9, to the date of class certification.

24. The Class is also comprised of the following Subclasses:

Waiting Time Sub-Class:

1 Those members of the Class who separated from their employment with Defendants
2 within three (3) years prior to the commencement of this action to the date of class
3 certification.

4 25. Plaintiff reserves the right pursuant to California Rules of Court, Rule 3.764 and
5 3.765, to amend or modify the respective definitions of the Class and/or Subclasses to provide
6 greater specificity and/or further division into subclasses or limitation to particular issues based on
7 further investigation and discovery.

8 26. This action is brought, and may properly be maintained, as a class action pursuant
9 to California Code of Civil Procedure section 382 because there is a well-defined community of
10 interest in the litigation, and the proposed class is easily ascertainable. This action presents
11 questions of common interest and satisfies the numerosity, commonality, typicality, adequacy,
12 predominance, and superiority requirements of this provision.

13 27. Through this action, Plaintiff alleges Defendants have consistently maintained and
14 enforced against Plaintiff and Class Members unlawful employment practices and policies which
15 violate the Labor Code and IWC Wage Orders.

16 28. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
17 Defendants failed to pay Plaintiff and Class Members all sick pay, vacation pay, minimum, regular,
18 overtime, and double time wages for all hours worked in violation of the Labor Code and IWC
19 Wage Orders. During the PAGA Period, Plaintiff and Class Members regularly worked more than
20 eight (8) hours and/or 10 hours per workday, over 40 hours per workweek, and/or over eight (8)
21 hours per workday on the seventh consecutive day of work. Defendants' practices and policies
22 deprived Plaintiff and Class Members of minimum, regular, overtime, and/or double time wages
23 for work they performed off the clock. Defendants required Plaintiff and Class Members to
24 complete work-related tasks off the clock, such as communicating with Defendants and traveling
25 to and from jobsites and work-related meetings. Furthermore, Defendants rounded Plaintiff and
26 Class Members' hours worked, thereby depriving them of wages for all hours worked at the legally
27 mandated rates. Employer did not compensate Plaintiff and Class Members for all hours worked
28 because Plaintiff and Class Members were regularly on-duty during their meal and/or rest periods.

1 Finally, Defendants failed to accurately calculate the regular rate of pay by failing to include a
2 remuneration when calculating the rate of pay for overtime, double time, meal and rest period
3 premiums, vacation pay, and sick pay.

4 29. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
5 Defendants deprived Plaintiff and Class Members of the opportunity to take all of their statutorily
6 entitled meal periods within the appropriate time intervals or provide compensation in lieu thereof
7 in violation of the Labor Code and IWC Wage Orders. During the Class Period, Defendants failed
8 to provide timely off-duty 30-minute meal periods within the appropriate time intervals to Plaintiff
9 and other Class Members as required by Labor Code section 512 and section 11 of the applicable
10 Wage Order. Specifically, Plaintiff and Class Members frequently had their meal periods shortened,
11 interrupted, late, and/or missed altogether due to Defendants' practice of understaffing and
12 prioritizing work demands over taking compliant breaks. Defendants also failed to authorize and
13 permit and/or make available to Plaintiff and Class Members second meal periods when they
14 worked more than 10 hours. Moreover, Defendants rounded Plaintiff and Class Members' time
15 punches for meal periods. Accordingly, Defendants failed to authorize and permit and/or make
16 available to Plaintiff and Class Members timely, uninterrupted off-duty meal periods for at least 30
17 minutes when they worked more than five (5) hours and/or 10 hours in a workday, and failed to
18 compensate Plaintiff and Class Members with an additional hour of pay at their regular rate of pay
19 for every day in which they were denied a compliant meal period, in violation of the Labor Code
20 and the applicable IWC Wage Orders.

21 30. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
22 Defendants failed to permit Plaintiff and Class Members to take all of their statutorily entitled 10-
23 minute rest periods for every four (4) hours worked or major fraction thereof or provide
24 compensation in lieu thereof in violation of the Labor Code and IWC Wage Orders. Plaintiff and
25 Class Members missed their rest breaks or had them interrupted or governed by Defendants'
26 practices and policies. Specifically, Defendants never scheduled rest breaks for Plaintiff and Class
27 Members and Plaintiff and Class Members were never authorized and permitted to take rest breaks.
28 Defendants also failed to adopt and implement a practice of providing third rest breaks when

1 Plaintiff and Class Members worked over 10 hours. Notwithstanding the above rest break
2 violations, Defendants failed to compensate Plaintiff and Class Members with an additional hour
3 of pay at their regular rate of pay for every day in which they suffered a rest period violation.
4 Accordingly, Employer violated the Labor Code and the applicable IWC Wage Orders.

5 31. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
6 Defendants failed to reimburse Plaintiff and Class Members for necessary business expenses
7 incurred in the performance of their duties in violation of the Labor Code and IWC Wage Orders.
8 During the Class Period, Defendants failed to reimburse Plaintiff and Class Members for all
9 business expenses incurred for Defendants' benefit. For example, Defendants required Plaintiff and
10 Class Members to use their personal cell phones to discuss work-related matters with Defendants'
11 representatives and for other work purposes without any reimbursement. Defendants required
12 Plaintiff and Class Members to purchase safety equipment necessary to the performance of their
13 job duties without reimbursement. In addition, Defendants required Plaintiff and Class Members to
14 use their personal vehicles to commute to and from Defendants' various jobsites to complete work-
15 related duties, without full reimbursement for mileage and related costs. Accordingly, Defendants
16 violated the Labor Code and applicable IWC Wage Orders.

17 32. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
18 Defendants willfully failed to timely pay all wages due to Plaintiff and the Waiting Time Subclass
19 upon separation of employment in violation of the Labor Code and IWC Wage Orders. Plaintiff
20 and Waiting Time Subclass Members were not paid all wages (including minimum, regular,
21 overtime, double time wages, sick pay, and vacation pay), reimbursements, meal period premiums,
22 and/or rest period premiums within the required time period in violation of the Labor Code and
23 applicable IWC Wage Orders.

24 33. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
25 Defendants failed to furnish Plaintiff and Class Members with accurate and complete wage
26 statements in violation of the Labor Code and IWC Wage Orders. Plaintiff and Class Members
27 received wage statements which did not accurately reflect the gross and net wages earned, total
28 hours worked, all applicable rates of pay and the corresponding number of hours worked at each

1 pay rate, and correct entity name and address on wage statements issued to Plaintiff and Class
2 Members, among other things in violation of the Labor Code and IWC Wage Orders.

3 34. Plaintiff is informed, believes, and thereon alleges that Defendants' actions as
4 described throughout this FAC were willful.

5 NUMEROSITY

6 35. The Class is so numerous that joinder of all of its members is impracticable. While
7 the exact number and identities of Class Members are unknown to Plaintiff at this time and can
8 only be ascertained through appropriate discovery, Plaintiff is informed, believes, and thereon
9 alleges that the Class consists of more than 100 persons.

10 36. A class action is the only available method for the fair and efficient adjudication of
11 this controversy. The members of the Class are so numerous that joinder of all members is
12 impractical, if not impossible. The identity of Class Members can be ascertained by analysis of
13 Defendants' employee and payroll records.

14 COMMONALITY

15 37. Common questions of fact and law exist as to all members of the Class that
16 predominate over any questions affecting only individual Class Members. These common legal
17 and factual questions include, but are not limited to, the following:

18 (a) Whether Defendants failed to pay Plaintiff and Class Members all sick pay,
19 vacation pay, minimum, regular, overtime, and double time wages for all hours worked by Plaintiff
20 and Class Members;

21 (b) Whether Defendants rounded the time worked by Plaintiff and Class
22 Members to Defendants' advantage;

23 (c) Whether Defendants failed to provide timely, uninterrupted, off-duty 30-
24 minute meal periods to Plaintiff and Class Members without compensation in lieu thereof;

25 (d) Whether Defendants auto-deducted 30-minute meal periods for missed or
26 short meal periods;

27 (e) Whether Defendants failed to permit timely, uninterrupted, off-duty 10-
28 minute rest breaks for every four (4) hours or major fraction thereof worked by Plaintiff and Class

1 Members without compensation in lieu thereof;

2 (f) Whether Defendants failed pay premium wages to class members when they
3 have not been provided with required meal and/or rest periods;

4 (g) Whether Defendants failed to timely pay Plaintiff and Waiting Time
5 Subclass Members all wages due either immediately upon termination or within 72 hours after
6 resignation;

7 (h) Whether Defendants' conduct was willful;

8 (i) Whether Defendants failed to issue accurate itemized wage statements to
9 Plaintiff and Class Members;

10 (j) Whether Defendants failed to reimburse Plaintiff and Class Members for
11 necessary business expenditures;

12 (k) Whether Defendants engaged in unfair business practices in violation of
13 California Business & Professions Code sections 17200 *et seq.*;

14 (l) Additional common questions of law and fact that may develop as the
15 litigation progresses.

16 **TYPICALITY**

17 38. Plaintiff is informed, believes, and thereon alleges that Plaintiff's claims are typical
18 of the claims of the Class because: Plaintiff and the Class sustained injuries and damages arising
19 out of and caused by Defendants' unlawful policies and practices; the claims arise out of the same
20 course of conduct by Defendants; Plaintiff's claims are based upon the same legal theories as the
21 claims of the Class; and the legal issues raised under California state law as a result of Defendants'
22 conduct apply equally to Plaintiff and the Class Members.

23 **ADEQUACY OF REPRESENTATION**

24 39. Plaintiff is an adequate representative of the Class, in that Plaintiff's claims (and
25 defenses, if any) are typical of those of the Class. Plaintiff has no conflicts of interest with Plaintiff's
26 fellow Class Members and will be able to fairly and adequately protect the interests of the Class.
27 Plaintiff has the same interests in the litigation of this case as the Class Members; and is committed
28 to vigorous prosecution of this case and has retained competent counsel experienced in class action

1 and wage and hour litigation of this nature.

2 **PREDOMINANCE**

3 40. Defendants have engaged in a common course of wage and hour abuse toward
4 Plaintiff and Class Members. The common issues arising from this conduct that affect Plaintiff and
5 Class Members predominate over any individual issues. Adjudication of these common issues in a
6 single action has important and desirable advantages of judicial economy.

7 **SUPERIORITY OF CLASS ACTION**

8 41. A class action is superior to other available methods for the fair and efficient
9 adjudication of this controversy because individual litigation of the claims of all Class Members is
10 impracticable. Even if every Class Member could afford individual litigation, the court system
11 could not. It would be unduly burdensome to the courts in which individual litigation of numerous
12 cases would proceed. Individualized litigation would also present the potential for varying,
13 inconsistent, or contradictory judgments and would magnify the delay and expense to all parties
14 and to the court system resulting from multiple trials of the same complex factual issues. Moreover,
15 individual actions by Class Members may establish inconsistent standards of conduct for
16 Defendants. By contrast, the conduct of this action as a class action, with respect to some or all of
17 the issues presented herein, presents fewer management difficulties, conserves the resources of the
18 parties and the court system, and protects the rights of each Class Member.

19 42. Defendants have acted or refused to act in respects generally applicable to the Class,
20 thereby making appropriate relief with regard to the members of the Class as a whole, as requested
21 herein.

22 **PUBLIC POLICY CONSIDERATIONS**

23 43. Employers in the State of California violate employment and labor laws every day.
24 Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation.
25 Former employees are fearful of bringing actions because they believe their former employers
26 might damage their future endeavors through negative references and/or other means. Class actions
27 provide Class Members who are not named in the action with a type of anonymity that allows for
28 the vindication of their rights while affording them privacy protections.

FIRST CAUSE OF ACTION
(FAILURE TO PAY ALL WAGES)
(Against All Defendants)

44. Plaintiff incorporates by reference all previous paragraphs of this FAC as though fully set forth herein.

45. At all relevant times, Defendants had a duty to comply with Labor Code sections 204, 206, 210, 218.6, 221, 223, 224, 227.3, 246, 510, 558, 1182.12, 1194, 1194.2, 1197, 1198, and the applicable IWC Wage Orders and California Code of Regulations.

46. Labor Code section 204 and the IWC Wage Orders require timely payment of all wages owed on regularly scheduled paydays at least twice during each calendar month, on days designated in advance by the employer as the regular paydays. All wages in earned in excess of the normal work period must be paid no later than the payday for the next regular payroll period.

47. Labor Code section 206 provides that in case of a dispute over wages, the employer shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving to the employee all remedies he/she is otherwise entitled to as to any balance claimed.

48. Labor Code section 210 provides:

every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. (b) The penalty shall either be recovered by the employee as a statutory penalty pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the issuance of a citation or pursuant to Section 98.3.

49. Labor Code section 221 provides “[i]t 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.”

50. Labor Code section 223 provides “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

51. Labor Code section 224 prohibits any deduction from an employee’s wages which

1 is not either authorized by the employee in writing or permitted by law.

2 52. Labor Code section 246 requires employers to provide and allow employees to use
3 at least 24 hours, or three days, of paid sick leave per year.

4 53. Labor Code section 227.3 requires employers to pay terminated employees for their
5 unused paid vacation time at their final rate of pay.

6 54. At all times relevant, Labor Code section 510, and applicable sections of the
7 California Code of Regulations and the IWC Wage Orders applied to Plaintiff's work with
8 Defendants and continue to apply to Class Members' employment with Defendants. Labor Code
9 section 510 and applicable provisions of the California Code of Regulations and IWC Wage Orders
10 state that any work performed in excess of eight hours in a workday and/or 40 hours in a workweek
11 must be paid at one and one-half times the employee's regular rate of pay. Any work performed in
12 excess of 12 hours in a workday must be compensated at the rate of no less than twice the regular
13 rate of pay for an employee.

14 55. Labor Code section 558 provides "[a]ny employer or other person acting on behalf
15 of an employer who violates, or causes to be violated, a section of this chapter or any provision
16 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
17 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
18 underpaid employee for each pay period for which the employee was underpaid in addition to an
19 amount to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100)
20 for each underpaid employee for each pay period for which the employee was underpaid in addition
21 to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section
22 shall be paid to the affected employee."

23 56. Labor Code section 1182.12 sets forth the minimum hourly wage that must be paid
24 to all employees in California for all hours worked. Local minimum wage ordinances may provide
25 for higher minimum wage rates that must be paid to employees for all hours worked in those locales
26 where each local ordinance is in effect. Labor Code section 1197 affirms that it is unlawful to pay
27 less than the state or local minimum wage, whichever is higher, for any hour of work.

28 57. Labor Code section 1194 provides that any employee receiving less than the legal

1 minimum wage or the legal overtime compensation applicable to the employee is entitled to recover
2 in a civil action the unpaid balance of the full amount of the minimum wage or overtime
3 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

4 58. Labor Code section 1194.2 authorizes the recovery of liquidated damages in an
5 amount equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

6 59. Labor Code section 1197 provides that the minimum wage for employees fixed by
7 the commission is the minimum wage to be paid to the employees, and the payment of a less wage
8 than minimum so fixed is unlawful.

9 60. Labor Code section 1198 prohibits employers from employing for longer hours or
10 less favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise
11 set by the Labor Commissioner.

12 61. The failure to pay at least minimum wages to Plaintiff and Class Members for each
13 and every hour worked violates Labor Code sections 1812.11-1812.12, 1194, 1194.2, and 1197;
14 the applicable IWC wage order section 4; and Business & Professions Code.

15 62. The failure to pay designated wages to Plaintiff and Class Members for each and
16 every hour worked violates Labor Code sections 221 and 223; the applicable IWC wage order
17 section 3; and Business & Professions Code.

18 63. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
19 Plaintiff and Class Members regularly worked in excess of eight (8), 10, and/or 12 hours per
20 workday and over 40 hours per workweek and were not paid all wages at their proper rate of pay
21 for overtime, double time, sick pay, vacation pay, and meal and rest period premiums, and off-the-
22 clock work including due to rounding, among other things.

23 64. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
24 Defendants failed to pay Plaintiff and Class Members all wages for hours worked (including sick
25 pay, vacation pay, and minimum, regular, overtime, and double time wages) by failing to accurately
26 record all time worked, time shaving, auto-deducting missed or short meal periods, rounding time
27 and meal period punches, and requiring off-the-clock work without compensation, among other
28 things.

65. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and Class Members have sustained and continue to sustain damages, including loss of earnings from minimum, regular, overtime, and double time compensation due, in an amount to be established at trial, plus prejudgment interest, attorneys' fees, and costs pursuant to statute.

66. Plaintiff is informed, believes, and thereon alleges that Defendants, through their conduct described herein, have committed an “intentional theft of wages in an amount greater than nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period” within the meaning of California Penal Code section 487m. Specifically, Defendants have intentionally deprived Plaintiff and Class Members of wages, as defined in Labor Code section 200, gratuities, as defined in Labor Code section 350, benefits, or other compensation, by unlawful means, with the knowledge that the wages, gratuities, benefits, or other compensation is due to Plaintiff and Class Members under the law. Plaintiff and the Class Members he seeks to represent are thus entitled to recover from Defendants treble damages and costs, including reasonable attorneys’ fees, pursuant to California Penal Code section 496(c).

67. WHEREFORE, Plaintiff and the Class Members Plaintiff seeks to represent request relief as described herein and below.

SECOND CAUSE OF ACTION

(FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU

THEREOF)

(Against All Defendants)

68. Plaintiff incorporates by reference all previous paragraphs of this FAC as though fully set forth herein.

69. At all relevant times, Defendants had a duty to comply with Labor Code sections 226.7 and 512, and the applicable IWC Wage Orders and California Code of Regulations.

70. Labor Code section 512 and Section 11 of the IWC Wage Orders prohibit an employer from employing any person for a work period of more than 5 hours per day without providing the employee with a meal period of not less than 30 minutes (commencing before the

1 employee's fifth hour of work), except that if the total work period per day is no more than 6 hours,
2 the meal period may be waived by mutual consent of the employer and employee. A second meal
3 period of not less than 30 minutes is required if an employee works more than 10 hours per day and
4 must begin before the employee's tenth hour of work, except if the total hours worked is no more
5 than 12 hours, the second meal period may be waived by mutual consent of the employer and
6 employee, but only if the first meal period was not waived.

7 71. Section 11 of the applicable IWC Wage Orders state that "[u]nless the employee is
8 relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on
9 duty' meal period and counted as time worked."

10 72. Labor Code section 226.7(b) and the IWC Wage Orders prohibit an employer from
11 requiring any employee to work during a meal period mandated by any California statute,
12 regulation, standard or order. If an employer fails to provide an employee with a meal period in
13 accordance with state law, Labor Code section 226.7(c) and the IWC Wage Orders require that the
14 employer pay the employee one additional hour of pay at the employee's regular rate of
15 compensation for each workday that the meal period is noncompliant.

16 73. Throughout the Class Period, Plaintiff and Class Members did not receive compliant
17 meal periods when working more than five (5) hours and/or 10 hours per workday because their
18 first and second meal periods were missed, late, interrupted, short, and/or not free of all duties.

19 74. During the Class Period, Defendants failed to pay Plaintiff and Class Members meal
20 period premiums for noncompliant meal periods pursuant to Labor Code section 226.7(b) and the
21 applicable IWC Wage Order and California Code of Regulations.

22 75. Plaintiff is informed, believes, and thereon alleges that Class Members did not
23 voluntarily waive their meal periods.

24 76. As a direct and proximate result of Defendants' unlawful conduct, as set forth
25 herein, Plaintiff and Class Members have sustained and continue to sustain damages, including loss
26 of premium pay for meal period violations and earnings, in an amount to be established at trial, plus
27 prejudgment interest pursuant to statute. To the extent such unpaid premiums or meal period
28 violations are deemed unpaid wages, Plaintiff will also seek attorneys' fees and costs pursuant to

1 statute.

2 77. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
3 conduct described herein, have committed an “intentional theft of wages in an amount greater than
4 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty
5 dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month
6 period” within the meaning of California Penal Code section 487m. Specifically, Defendants have
7 intentionally deprived Plaintiff and Class Members of wages, as defined in Labor Code section 200,
8 gratuities, as defined in Labor Code section 350, benefits, or other compensation, by unlawful
9 means, with the knowledge that the wages, gratuities, benefits, or other compensation is due to
10 Plaintiff and Class Members under the law Plaintiff is informed, believes, and thereon alleges that
11 meal period premiums are wages, gratuities, benefits, or other compensation within the meaning of
12 California Penal Code section 487m. Plaintiff and the Class Members he seeks to represent are thus
13 entitled to recover from Defendants treble damages and costs, including reasonable attorneys’ fees,
14 pursuant to California Penal Code section 496(c).

15 78. WHEREFORE, Plaintiff and the Class Members Plaintiff seeks to represent request
16 relief as described herein and below.

17 **THIRD CAUSE OF ACTION**

18 **(FAILURE TO PERMIT REST PERIODS OR PROVIDE COMPENSATION IN LIEU**
19 **THEREOF)**

20 **(Against All Defendants)**

21 79. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
22 fully set forth herein.

23 80. At all relevant times, Defendants had a duty to comply with Labor Code section
24 226.7 and the applicable IWC Wage Orders and California Code of Regulations.

25 81. Labor Code section 226.7(a) states “No employer shall require any employee to
26 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
27 Commission.”

28 82. Section 12 of the applicable IWC Wage Order provides in relevant part that:

1 (A) Every employer shall authorize and permit all employees to
2 take rest periods, which insofar as practicable shall be in the middle
3 of each work period. The authorized rest period time shall be based
4 on the total hours worked daily at the rate of ten (10) minutes net rest
5 time per four (4) hours or major fraction thereof. However, a rest
6 period need not be authorized for employees whose total daily work
7 time is less than three and one-half (3 1/2) hours. Authorized rest
8 period time shall be counted as hours worked for which there shall be
9 no deduction from wages.

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

15 83. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
16 Plaintiff and Class Members worked in excess of three-and-a-half (3.5) hours, six (6) hours, and/or
17 10 hours per workday.

18 84. During the Class Period, Plaintiff and Class Members did not receive compliant 10-
19 minute rest periods for every four hours worked or major fraction thereof because rest breaks were
20 missed, interrupted, shortened, restricted to the worksite, and/or not free of all duties.

21 85. During the Class Period, Defendants failed to pay Plaintiff and Class Members rest
22 period premiums for noncompliant rest periods pursuant to Labor Code section 226.7(b) and the
23 applicable IWC Wage Order.

24 86. As a direct and proximate result of Defendants' unlawful conduct, as set forth
25 herein, Plaintiff and Class Members have sustained and continue to sustain damages, including loss
26 of earnings, in an amount to be established at trial plus prejudgment interest pursuant to statute. To
27 the extent such unpaid premiums or rest period violations are deemed unpaid wages, Plaintiff will
28 also seek attorneys' fees and costs pursuant to statute.

87. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
conduct described herein, have committed an "intentional theft of wages in an amount greater than
nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty
dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month
period" within the meaning of California Penal Code section 487m. Specifically, Defendants have

1 intentionally deprived Plaintiff and Class Members of wages, as defined in Labor Code section 200,
2 gratuities, as defined in Labor Code section 350, benefits, or other compensation, by unlawful
3 means, with the knowledge that the wages, gratuities, benefits, or other compensation is due to
4 Plaintiff and Class Members under the law Plaintiff is informed, believes, and thereon alleges that
5 rest period premiums are wages, gratuities, benefits, or other compensation within the meaning of
6 California Penal Code section 487m. Plaintiff and the Class Members he seeks to represent are thus
7 entitled to recover from Defendants treble damages and costs, including reasonable attorneys' fees,
8 pursuant to California Penal Code section 496(c).

9 88. WHEREFORE, Plaintiff and the Class Members Plaintiff seeks to represent request
10 relief as described herein and below.

11 **FOURTH CAUSE OF ACTION**

12 **(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)**

13 **(Against All Defendants)**

14 89. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
15 fully set forth herein.

16 90. At all relevant times, Defendants had a duty to comply with Labor Code section 226
17 and the applicable IWC Wage Orders and California Code of Regulations.

18 91. Labor Code section 226(a) requires that, semimonthly or at the time of each payment
19 of wages, employers must furnish each employee with an accurate itemized wage statement in
20 writing that accurately shows (1) gross wages earned, (2) total number of hours worked, (3) the
21 number of any piece-rate units earned and all applicable piece rates, (4) all deductions made from
22 wages, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name and last four
23 digits or employment identification number of the employee, (8) the name and address of the legal
24 entity that is the employer, and (9) all applicable hourly rates in effect and the corresponding
25 number of hours worked at each hourly rate.

26 92. Labor Code section 226(e)(1) authorizes an employee suffering injury as a result of
27 a knowing and intentional failure by an employer to provide an accurate itemized wage statement
28 to recover the greater of all actual damages or \$50 for the initial pay violation and \$100 for each

1 violation in a subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee,
2 in addition to an award of costs and attorneys' fees.

3 93. Section 7 of the IWC Wage Orders requires Defendants to maintain time records
4 showing, among other things, when the employee begins and ends each work period, meal periods
5 taken, and total daily hours worked in an itemized wage statement, and must show all deductions
6 and reimbursements from payment of wages, and accurately report total hours worked by Plaintiff
7 and Class Members. Plaintiff is informed, believes, and thereon alleges that Defendants have
8 knowingly and intentionally failed to comply with the IWC Wage Orders.

9 94. Throughout the Class Period, Defendants provided wage statements that did not
10 accurately reflect the total number of hours worked by Plaintiff and Class Members at each
11 corresponding pay rate, the gross and net wages earned, and the correct entity name and address on
12 wage statements, among other things, making it difficult for Plaintiff and Class Members to
13 determine whether they were paid correctly for all hours worked, which deductions were made, and
14 the extent of any underpayment. Plaintiff has had to file this lawsuit in order to determine the
15 extent of the underpayment of wages, thereby causing Plaintiff to incur expenses and lost time.
16 Plaintiff would not have had to engage in these efforts and incur these costs had Defendants
17 provided the accurate wages earned. This has also delayed Plaintiff's ability to demand and recover
18 the underpayment of wages from Defendants. Defendants' violations of Labor Code section 226(a)
19 prevented Plaintiff and Class Members from knowing, understanding and disputing the wages paid
20 to them, and resulted in an unjustified economic enrichment to Defendants.

21 95. Defendants knowingly and intentionally failed to provide accurate, itemized wage
22 statements to Plaintiff and Class Members, and as such Plaintiff and Class Members are deemed to
23 have suffered injury in accordance with Labor Code section 226. Plaintiff and the Class are
24 therefore entitled to the damages and penalties provided for under Labor Code section 226(e).

25 96. Plaintiff and Class Members are also entitled to injunctive relief under Labor Code
26 section 226(h), compelling Defendants to comply with Labor Code section 226, and seek the
27 recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

28 97. WHEREFORE, Plaintiff and the Class Members Plaintiff seeks to represent request

1 relief as described herein and below.

2 **FIFTH CAUSE OF ACTION**
3 **(WAITING TIME PENALTIES)**
4 **(Against All Defendants)**

5 98. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
6 fully set forth herein.

7 99. At all relevant times, Defendants had a duty to comply with Labor Code
8 sections 201, 202, and 203, and the applicable IWC Wage Orders and California Code of
9 Regulations. Defendants failed to comply with these final paycheck requirements with respect to
10 Plaintiff and Waiting Time Subclass Members.

11 100. Labor Code section 201 requires that if an employer discharges an employee, the
12 wages earned and unpaid at the time of discharge are due and payable immediately.

13 101. Labor Code section 202 requires that if “an employee not having a written contract
14 for a definite period” quits, the employee’s wages shall become due and payable no later than
15 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention
16 to quit, in which case the employee is entitled to his or her wages at the time of quitting.

17 102. Labor Code section 203 provides that if an employer willfully fails to pay, without
18 abatement or reduction, any wages of an employee who is discharged or quits, the wages of the
19 employee shall continue as a penalty from the due date thereof at the same rate until paid or until
20 an action therefor is commenced, but that the wages shall not continue for more than 30 days per
21 employee.

22 103. Plaintiff is informed, believes, and thereon alleges, that at all relevant times,
23 Defendants willfully failed to timely pay Plaintiff and Waiting Time Subclass Members all of their
24 unpaid wages earned, including, but not limited to, minimum, regular, overtime, and double time
25 wages, compensation for non-compliant meal periods and rest periods, and unpaid expense
26 reimbursements upon separation of employment. Plaintiff and Waiting Time Subclass Members
27 are entitled to timely compensation upon separation of their employment for any outstanding
28 unpaid wages, reimbursements, and premiums but to date have not received such compensation

1 from Defendants, therefore entitling them to penalties pursuant to Labor Code section 203.

2 104. As a consequence of Defendants' willful conduct in failing to pay all earned wages,
3 Plaintiff and Waiting Time Subclass Members are entitled to up to 30 days' wages as a penalty for
4 Defendants' failure to timely pay wages upon separation of employment, in addition to prejudgment
5 interest, attorneys' fees, and costs in amounts that will be established at trial.

6 105. WHEREFORE, Plaintiff and the Class Members Plaintiff seeks to represent request
7 relief as described herein and below.

8 **SIXTH CAUSE OF ACTION**

9 **(FAILURE TO REIMBURSE BUSINESS EXPENSES)**

10 **(Against All Defendants)**

11 106. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
12 fully set forth herein.

13 107. At all relevant times, Defendants had a duty to comply with Labor Code
14 sections 2800 and 2802 and the applicable IWC Wage Orders and California Code of Regulations.

15 108. Labor Code section 2800 requires employers to indemnify employees for losses
16 caused by the employer's want of ordinary care. To the extent Defendants claim that Plaintiff and
17 Class Members failed to request, demand, notify or otherwise seek reimbursement for their
18 expenses and losses, Defendants were obligated to nevertheless indemnify Plaintiff and Class
19 Members due to their own negligence.

20 109. Labor Code section 2802(a) requires that employers indemnify and reimburse
21 employees for all business expenses, which are defined as all necessary expenditures or losses
22 incurred by the employee in direct consequence of the discharge of the employee's duties or
23 otherwise incurred based on the employee's obedience to the employer's directions. Labor Code
24 section 2802(b) authorizes employees to recover in a court action interest which shall accrue from
25 the date on which the employee incurred the necessary expenditure or loss. Labor Code
26 section 2802(c) authorizes employees, who to enforce their right to reimbursements under Labor
27 Code section 2802, to also recover attorneys' fees and costs.

28 110. During the Class Period, Defendants failed to reimburse Plaintiff and Class

Members for all business expenses incurred for Defendants' benefit. For example, Plaintiff and Class Members were required to use their personal cell phones to discuss work-related matters with Defendants' representatives and for other work purposes without any reimbursement.

111. As a consequence of Defendants' willful conduct, Plaintiff and Class Members have sustained damages for unreimbursed out-of-pocket business expenses, due in an amount to be established at trial, plus prejudgment interest, attorney's fees, and costs pursuant to statute.

112. WHEREFORE, Plaintiff and the Class Members Plaintiff seeks to represent request relief as described herein and below.

SEVENTH CAUSE OF ACTION
(VIOLATION OF THE UNFAIR COMPETITION LAW)
(Against All Defendants)

113. Plaintiff incorporates by reference all previous paragraphs of this FAC as though fully set forth herein.

114. California Business & Professions Code Section 17200, *et seq.* prohibits unfair competition by prohibiting unlawful, unfair, or fraudulent business practices or acts.

115. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful and harmful to Plaintiff, Class Members, and Defendants' competitors. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure section 1021.5.

116. Defendants' activities, as alleged herein, violate California law and constitute unlawful business acts or practices in violation of California Business and Professions Code sections 17200, *et seq.*

117. A violation of Business and Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law.

118. Plaintiff brings this action individually and on behalf of all members of the general public, including the Class Members, pursuant to the UCL. Defendants' conduct alleged below constitutes false, fraudulent, unlawful, unfair, and/or deceptive business practices, in violation of the UCL. Defendants' policies and practices have violated state law in at least the following

1 respects:

2 (a) Failing to pay all sick pay, vacation pay, and minimum, regular, overtime,
3 and double time wages due to Plaintiff and Class Members in violation of Labor Code sections 204,
4 206, 210, 218, 221, 223, 224, 227.3, 246, 510, 558, 1182.12, 1194, 1194.2, 1197, 1198, and the
5 applicable IWC Wage Orders and California Code of Regulations;

6 (b) Failing to provide compliant meal periods or compensation in lieu thereof in
7 violation of Labor Code sections 226.7 and 512;

8 (c) Failing to authorize or permit rest breaks and/or provide compensation in
9 lieu thereof in violation of Labor Code section 226.7;

10 (d) Intentionally failing to provide Plaintiff and Class Members with accurate
11 itemized wage statements in violation of Labor Code section 226;

12 (e) Failing to timely pay all earned wages to Plaintiff and Waiting Time
13 Subclass Members upon separation of employment in violation of Labor Code sections 201, 202,
14 and 203;

15 (f) Failing to reimburse Plaintiff and Class Members all necessary business
16 expenses in violation of Labor Code sections 2800 and 2802; and

17 (g) Violations of the IWC Wage Orders for the same conduct above.

18 119. Defendants' course of conduct, acts, and practices in violation of California law
19 mentioned above each constitute a separate and independent violation of the UCL. Defendants'
20 conduct described herein violates the policy or spirit of such laws or otherwise significantly
21 threatens or harms competition. The substantial harm to Plaintiff and Class Members in being
22 wrongfully denied earned wages, meal and rest periods, premium pay, and reimbursements
23 outweighs the utility, if any, of Defendants' policies or practices and, therefore, Defendants' actions
24 described herein constitute an unfair business practices or acts within the meaning of the UCL.

25 120. Plaintiff further brings this cause of action on behalf of the proposed Class, seeking
26 statutory and injunctive relief to stop the misconduct of Defendants, as complained herein, and to
27 compel restitution and disgorgement of all profits (i.e., unpaid wages, reimbursements, and
28 premiums, etc.) obtained by Defendants through the unfair and unlawful business practices

described herein pursuant to, *inter alia*, Business and Professions Code sections 17202, 17203, and 17208. Under the circumstances alleged, it would be inequitable and result in a miscarriage of justice for Defendants to continue to retain the property of Plaintiff and Class Members.

121. Defendants' failure to adopt and implement policies in accordance with and/or adhere to these laws, all of which are binding upon and burdensome to Defendants' competitors, engenders an unfair competitive advantage for Defendants against its competitors, thereby constituting an unfair business practice, as set forth in the UCL.

122. Pursuant to California Business and Professions Code section 17203, as a direct and proximate result of the unfair business practices of Defendants, Plaintiff, individually, and on behalf of others similarly situated, is entitled to equitable and injunctive relief, against such unlawful practices in order to prevent future damage, for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits. Plaintiff also seeks an order enjoining Defendants to cease and desist from engaging in the practices described herein.

123. Plaintiff and Class Members also request any other such legal and equitable relief from Defendants' unlawful and willful conduct as the Court deems just and proper, including an injunction prohibiting Defendants from engaging in the unfair, unlawful, and/or fraudulent practices alleged in this FAC.

124. As a result of Defendants' unlawful and unfair business practices, Plaintiff and Class Members are entitled to and seek other appropriate relief available under California Business & Professions Code sections 17200 *et seq.* Plaintiff, on behalf of herself and the Class, also seeks recovery of attorneys' fees and costs of this action to be paid by Defendants as provided by California Code of Civil Procedure section 1021.5.

125. WHEREFORE, Plaintiff and the Class Members Plaintiff seeks to represent request relief as described herein and below.

EIGHTH CAUSE OF ACTION

(VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

(Against All Defendants)

126. Plaintiff incorporates by reference all previous paragraphs of this FAC as though

1 fully set forth herein.

2 127. Under Labor Code Section 2699(a), any provision of the Labor Code that provides
3 for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,
4 commissions, boards, agencies or employees for violation of the code may, as an alternative, can
5 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
6 herself and other current or former employees pursuant to the procedures specified in Labor Code
7 Section 2699.3.

8 128. Under Labor Code Section 2699.3(a), a plaintiff may bring a cause of action under
9 PAGA only after giving the LWDA and the employer notice of the Labor Code Sections alleged to
10 have been violated, and after receiving notice from the LWDA of its intention not to investigate or
11 after 65 days have passed without notice from the LWDA.

12 129. On July 12, 2023, Plaintiff gave written notice of the specified provisions alleged to
13 have been violated, including the facts and theories to support the alleged violations, as required
14 by Labor Code Section 2699.3. This written notice was provided via certified mail to Defendants
15 and to the LWDA by electronically filing the notice via the Department of Industrial Relations'
16 website. More than 65 days have passed since Plaintiff submitted the PAGA notice to the LWDA
17 without notice from the LWDA. Accordingly, Plaintiff has exhausted the procedural requirements
18 under Labor Code Section 2699.3 as to Defendants and is therefore able to pursue a claim for
19 penalties on behalf of herself and all other Aggrieved Employees under PAGA.

20 130. For all provisions of the Labor Code except those for which a civil penalty is
21 specifically provided, Labor Code Section 2699(f) imposes upon Defendants a penalty of one
22 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
23 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent pay period
24 in which Defendants violated these provisions of the Labor Code.

25 131. Pursuant to Labor Code Sections 2699.3 and 2699.5, Plaintiff may seek civil
26 penalties for any alleged violation of the following provisions: subdivision (k) of Section 96,
27 Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,
28 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223,

1 and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections
2 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section
3 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of
4 Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603,
5 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026,
6 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197,
7 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292,
8 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5,
9 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55,
10 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31,
11 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and
12 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810,
13 subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, 6399.7, 6400, 6401, 6401.7,
14 6402, and 6403.

15 132. Labor Code Section 558(a) provides “[a]ny employer or other person acting on
16 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
17 provision regulating hours and days of work in any order of the Industrial Welfare Commission
18 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
19 underpaid employee for each pay period for which the employee was underpaid . . . (2) For each
20 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period
21 for which the employee was underpaid.”

22 133. Labor Code Section 1197.1 provides “[a]ny employer or other person acting either
23 individually or as an officer, agent, or employee of another person, who pays or causes to be paid
24 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an
25 order of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial violation
26 that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each
27 pay period for which the employee is underpaid . . . (2) For each subsequent violation for the same
28 specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period

1 for which the employee is underpaid regardless of whether the initial violation is intentionally
2 committed.”

3 134. Labor Code Section 226.3 provides: “[a]ny employer who violates subdivision (a)
4 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
5 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
6 each violation in a subsequent citation, for which the employer fails to provide the employee a
7 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
8 The civil penalties provided for in this section are in addition to any other penalty provided by law.”

9 135. Labor Code Section 1174.5 provides a \$500 penalty for an employer’s failure to
10 maintain accurate and complete payroll records showing the hours worked daily by and the wages
11 paid to employees.

12 136. Defendants’ conduct with respect to Plaintiff and other Aggrieved Employees
13 violates numerous Labor Code sections including, but not limited to, the following:

14 (a) Violation of Labor Code Sections 201-204, 206, 210, 221, 223, 227.3, 246,
15 510, 558, 1194, 1197, 1197.1, and 1198 for failure to timely pay all earned sick pay, vacation pay,
16 and wages (including minimum, regular, overtime, and double time wages), owed to Plaintiff and
17 other aggrieved employees during employment and upon separation of employment;

18 (b) Violation of Labor Code Sections 226.7 and 512 for failure to provide meal
19 periods to Plaintiff and/or other Aggrieved Employees and failure to pay premium wages for missed
20 meal periods;

21 (c) Violation of Labor Code Section 226.7 for failure to permit rest breaks to
22 Plaintiff and/or other Aggrieved Employees and failure to pay premium wages for missed rest
23 periods;

24 (d) Violation of Labor Code Sections 226 and 226.3 for failure to provide
25 accurate itemized wage statements to Plaintiff and/or other Aggrieved Employees;

26 (e) Violation of Labor Code Sections 226, 226.3, 1174, and 1174.5 for failure
27 to calculate and pay sick pay at the regular rate of pay for the workweek in which Plaintiff and/or
28 other Aggrieved Employees used paid sick time, or by dividing the Plaintiff and/or other Aggrieved

1 Employees' total wages, not including overtime premium pay, by the Plaintiff and/or other
2 Aggrieved Employees' total hours worked in the full pay periods of the prior 90 days of
3 employment, in violation of Labor Code Sections 246, 246.5, 247, 247.5, and 248.5 and the Healthy
4 Workplaces, Healthy Families Act of 2014;

5 (f) Violation of Labor Code Section 227.3 for failure to provide to Plaintiff
6 and/or Aggrieved Employees accrual of vacation wages and failure to pay to Plaintiff and/or
7 Aggrieved Employees vested vacation wages;

8 (g) Violation of Labor Code Sections 221 and 223 for secretly paying Plaintiff
9 and/or Aggrieved Employees less than the statutory or contractual rate;

10 (h) Violation of Labor Code Sections 1174 and 1174.5 for failure to maintain
11 accurate records regarding the employment of Plaintiff and/or other Aggrieved Employees;

12 (i) Violation of Labor Code Sections 2800 and 2802 for failure to reimburse
13 business expenses to Plaintiff and other Aggrieved Employees;

14 (j) Violation of Labor Code Sections 1198 and 1199 for failure to provide to
15 Plaintiff and/or Aggrieved Employees certain tools and/or equipment necessary for the
16 performance of Plaintiff and/or Aggrieved Employees' job duties; and

17 (k) Violation of Labor Code Section 1199 for each of the foregoing Labor Code
18 violations.

19 137. As set forth above, Defendants have violated numerous provisions of the Labor
20 Code regulating hours and days of work as well as the IWC Wage Orders.

21 138. Pursuant to Labor Code Sections 2699(a), 2699.3, and 2699.5, Plaintiff is entitled
22 to recover civil penalties, in addition to other remedies, for violations of the Labor Code Sections
23 cited above.

24 139. Plaintiff is an "aggrieved employee" because she was employed by Defendants and
25 had one or more of the alleged violations committed against her, and therefore is properly suited
26 to represent the interests of all other aggrieved employees.

27 140. Plaintiff has exhausted the procedural requirements under Labor Code Section
28 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself

1 and all other aggrieved employees under the PAGA.

2 141. Pursuant to Labor Code Sections 2699(g) and 2802(c) and California Code of Civil
3 Procedure Section 1021.5, Plaintiff is entitled to attorneys' fees and costs incurred in this action.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, on behalf of herself and the proposed Class, prays for judgment
6 and the following specific relief against Defendants, jointly and severally, as follows:

7 1. That the Court certify the proposed Class and Subclasses, and any other class or
8 subclasses as appropriate under California Code of Civil Procedure section 382;

9 2. That Plaintiff be appointed as the Class Representative;

10 3. That David Alami and Shaheen Anthony Etemadi of Alami Law Group be appointed
11 as Class Counsel for all purposes;

12 4. For compensatory damages in an amount according to proof with interest thereon;

13 5. For such general, economic, and/or special damages in an amount according to proof
14 with interest thereon;

15 6. For damages, monetary relief, wages, premiums, reimbursements, benefits and
16 penalties, including interest thereon;

17 7. For treble damages pursuant to Penal Code section 496(c) for violation of Penal
18 Code section 487m;

19 8. For waiting time penalties pursuant to Labor Code section 203;

20 9. For statutory penalties to the extent permitted by law, including those pursuant to
21 the Labor Code and IWC Wage Orders;

22 10. For the amounts provided for in Labor Code section 226.7;

23 11. For attorney's fees, costs of suit, including expert fees, and interest pursuant to
24 Labor Code sections 218.6, 226, 1194, 2802 and California Code of Civil Procedure section 1021.5;

25 12. For restitution to Plaintiff and Class Members of all money and property unlawfully
26 acquired by Defendants through unfair or unlawful business practices pursuant to Business and
27 Professions Code sections 17200 *et seq.*;

28 13. For an order requiring Defendants to restore and disgorge all funds to each employee

1 acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent
2 and, therefore, constituting unfair competition under Business and Professions Code sections
3 17200, *et seq.*;

4 14. For liquidated damages pursuant to Labor Code section 1194.2;

5 15. For permanent injunctive relief described in the UCL cause of action;

6 16. For prejudgment interest on all sums recovered pursuant to Labor Code
7 section 218.6, California Civil Code sections 3287 and 3289, and applicable law;

8 17. For post-judgment interest on all amounts awarded to Plaintiff and Class Members
9 as provided by law;

10 18. A declaratory judgment that the practices complained of herein are unlawful under
11 California law;

12 19. PAGA penalties; and

13 20. For such other relief the Court deems just and proper.

14 Dated: October 17, 2023

ALAMI LAW GROUP

16
17 By: 

18 David Alami

19 Shaheen Anthony Etemadi

20 Attorneys for Plaintiff MARIA VILMA
21 ARGUETA
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Dated: October 17, 2023

ALAMI LAW GROUP



David Alami
Shaheen Anthony Etemadi
Attorneys for Plaintiff MARIA VILMA
ARGUETA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28