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on behalf of herself and others similarly situated

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

NELIDA BARAJAS, an individual on behalf
of herself and all others similarly situated,

Plaintiff,

vs.

CANCER CENTER ONCOLOGY
MEDICAL GROUP, INC. – EAST
COUNTY, a California corporation;
CANCER CENTER ONCOLOGY
MEDICAL GROUP, a business entity of
unknown form; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 37-2023-00029649-CU-OE-CTL

CLASS ACTION

Assigned for All Purposes To:
Hon. James A. Mangione
Dept.: C-75

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a);
6. Violation of Labor Code § 203;
7. Violation of Labor Code § 204;
8. Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5;
9. Failure to Reimburse Necessary Business Expenses § 2802;
10. Violation of Business & Professions Code § 17200 *et seq.*; and
11. Penalties under PAGA, Labor Code § 2698.

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff NELIDA BARAJAS (“Plaintiff”) brings this action on behalf of herself and the Class Members who are defined as “all current and former employees within the State of California who, at any time from four (4) years prior to the filing of this lawsuit, are or were employed as non-exempt hourly employees by Defendants CANCER CENTER ONCOLOGY MEDICAL GROUP, INC. – EAST COUNTY, a California corporation, CANCER CENTER ONCOLOGY MEDICAL GROUP, a business entity of unknown form; and DOES 1 through 50” (all defendants being collectively referred to herein as “Defendants”).

2. Plaintiff alleges that Defendants, and each of them, violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and the California Business & Professions Code, and seeks redress for these violations.

3. Upon information and belief, Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3) endured similar violations at the hands of Defendants as the other Class Members who served in similar and related positions.

THE PARTIES

A. The Plaintiff

4. Plaintiff NELIDA BARAJAS resides in California, during the time period relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee within the State of California.

B. The Defendants

5. Defendant CANCER CENTER ONCOLOGY MEDICAL GROUP, INC. – EAST COUNTY is a California corporation and is registered with the California Secretary of State. Defendant CANCER CENTER ONCOLOGY MEDICAL GROUP, INC. – EAST COUNTY has been the employer listed on the wage statements and employment records issued to Plaintiff during the relevant time period that Plaintiff was employed with Defendants.

6. Defendant CANCER CENTER ONCOLOGY MEDICAL GROUP is a business entity of unknown form and has been the employer listed on the wage statements and employment

1 records issued to Plaintiff during the relevant time period that Plaintiff was employed with
2 Defendants.

3 7. The true names and capacities, whether individual, corporate, associate, or
4 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
5 unknown to Plaintiff, who therefore sue these Defendants by such fictitious names under Code of
6 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
7 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
8 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
9 this Complaint to reflect the true names and capacities of the Defendants designated herein as
10 Does 1 through 50 when their identities become known.

11 8. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
12 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
13 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
14 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
15 all respects as the employers or joint employers of Class Members. Defendants, and each of them,
16 exercised control over the wages, hours or working conditions of Class Members, or suffered or
17 permitted Class Members to work, or engaged, thereby creating a common law employment
18 relationship, with Class Members. Therefore, Defendants, and each of them, employed or jointly
19 employed Class Members.

20 9. Whenever and wherever reference is made in this Complaint to any act by a
21 defendant or defendants, such allegations and references shall also be deemed to mean the acts and
22 failures to act of each defendant acting individually, jointly, and severally.

23 10. Whenever and wherever reference is made to individuals who are not named as a
24 Defendant in this Complaint but were agents, servants, employees and/or supervisors of
25 Defendants, such individuals at all relevant times acted on behalf of Defendants within the scope
26 of their employment.

27 **JURISDICTION AND VENUE**

28 11. This Court has jurisdiction over this Action pursuant to California Code of Civil

1 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
2 as a Class Action on behalf of similarly situated Class Members of Defendants pursuant to
3 California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial
4 district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief,
5 the obligations and liabilities giving rise to this lawsuit occurred in part in San Diego County.
6 Defendants maintain and operate facilities in San Diego County and employs Plaintiff and other
7 Class Members in San Diego County, while doing business throughout California.

8 **FACTUAL BACKGROUND**

9 12. Class Members consistently worked at Defendants behest without being paid all
10 wages due. Class Members were either not paid by Defendants for all hours worked or were not
11 paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that
12 Defendants failed to pay Class Members all wages due and owing, including by requiring off the
13 clock work, failing to incorporate non-discretionary bonuses and/or commissions into the regular
14 rate of pay used to calculate and pay for overtime pay, sick pay, and meal and rest break
15 premiums, unlawfully rounding to their detriment, failing to provide meal and rest breaks, failing
16 to furnish accurate wage statements, failing to timely pay wages including final wages, failing to
17 maintain accurate records, and failing to reimburse necessary business expenses all in violation of
18 various provisions of the California Labor Code and applicable Wage Orders.

19 13. During the course of Class Members' employment with Defendants, they were not
20 paid all wages they were owed, including for all work performed resulting in off the clock work.
21 Defendants required Class Members to perform pre-shift and post-shift off the clock work. For
22 instance, at the beginning of Class Members' shift, they were required to help patients, submit
23 authorizations, and call hospitals prior to clocking in. Additionally, Class Members were required
24 to undergo COVID screenings and temperature checks before being allowed to clock in resulting
25 in further off the clock work.

26 14. Defendants also failed to pay Class Members all wages due and owing because
27 Defendants failed to incorporate non-discretionary, performance-based bonuses and/or
28 commissions into the regular rate of pay. Contrary to the requirements of the Labor Code and IWC

1 Wage Orders under California law, Defendants did not incorporate these non-discretionary
2 bonuses and/or commissions paid to the Class Members into the regular rate of pay Defendants
3 used to calculate and pay for overtime, sick pay, and meal and rest break premiums.

4 15. Moreover, Defendants had a consistent policy and practice of unlawfully rounding
5 hours worked to the detriment of the Class Members. Rather than paying Class Members for all
6 hours and minutes they actually worked, Defendants followed a uniform policy and practice of
7 rounding all time entries to the nearest quarter-hour or half-hour (i.e. to the nearest 15-minute or
8 30-minute time increment), and generally did so to the detriment of the Class Members, and
9 Plaintiff contend this policy is not neutral and resulted, over time, to the detriment of the Class
10 Members by systematically under-compensating them. Rather than reflecting the actual hours
11 worked by Class Members, the time entries were rounded and reduced to reflect the scheduled
12 work time rather than the actual hours worked. These unlawfully rounded time entries were
13 inputted into Defendants' payroll system from which wage statements and payroll checks were
14 created.

15 16. By implementing policies, programs, practices, procedures and protocols which
16 resulted in off the clock work, unlawful rounding by Defendants, and the failure to incorporate
17 non-discretionary bonuses and/or commissions into the regular rate of pay used to calculate and
18 pay overtime, sick pay, and meal and rest break premiums, Defendants' willful actions resulted in
19 the systematic underpayment of wages to Class Members, including underpayment of overtime
20 pay to Class Members over the relevant time period. For example, the above described off the
21 clock work addressed above caused Plaintiff to begin receiving overtime pay later than they
22 should have.

23 17. As a result of the above described requirements to work off the clock, unlawful
24 rounding by Defendants, the failure to incorporate non-discretionary bonuses and/or commissions
25 into the regular rate of pay used to calculate and pay overtime, sick pay, and meal and rest break
26 premiums, and the other wage violations they endured at Defendants' hands, Class Members were
27 not properly paid all wages earned and all wages owed to them by Defendants, including when
28 working more than eight (8) hours in any given day and/or more than forty (40) hours in any given

1 week.

2 18. As a result of Defendants' unlawful policies and practices, Class Members incurred
3 overtime hours worked for which they were not adequately and completely compensated, in
4 addition to the hours they were required to work off the clock. To the extent applicable,
5 Defendants also failed to pay Class Members at an overtime rate of 1.5 times the regular rate for
6 the first eight hours of the seventh consecutive work day in a week and overtime payments at the
7 rate of 2 times the regular rate for hours worked over eight (8) on the seventh consecutive work
8 day, as required under the Labor Code and applicable IWC Wage Orders.

9 19. Therefore, from at least four (4) years prior to the filing of this lawsuit and
10 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
11 Members for all hours worked, and failing to pay minimum wages for all time worked, as required
12 by California law. Defendants thus failed to pay Class Members at least minimum wages for all
13 the time they worked for Defendants in violation of the Labor Code and applicable IWC Wage
14 Orders as the actual times when Class Members were under the control and direction of
15 Defendants was under reported in the hours reflected on the timekeeping records. Furthermore,
16 Defendants' willful actions resulted in the systematic underpayment of wages to Class Members,
17 including underpayment of overtime pay to Class Members over a period of time.

18 20. Therefore, from at least four (4) years prior to the filing of this lawsuit and
19 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
20 Members for all hours worked. Also, from at least four (4) years prior to the filing of this lawsuit
21 and continuing to the present, Defendants also had a consistent policy or practice of failing to pay
22 Class Members their true and correct overtime compensation at premium overtime rates for all
23 hours worked in excess of eight (8) hours a day and/or forty (40) hours a week, and double-time
24 rates for all hours worked in excess of twelve (12) hours a day, in violation of Labor Code § 510
25 and the corresponding sections of IWC Wage Orders.

26 21. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
27 meal periods and all the legally required paid, off-duty rest periods to Class Members, as required
28 by the applicable Wage Order and Labor Code. Class Members were required to perform work as

1 ordered by Defendants for more than five (5) hours during a shift but were often required to do so
2 without receiving a lawful and timely meal break. In addition to untimely meal periods,
3 Defendants also required Class Members to respond to work demands. Defendants placed their
4 needs over Class Members lawful meal and rest breaks and this resulted in Class Members often
5 having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened
6 ones, because the demands of the job would not avail them the opportunity to take a lawfully
7 uninterrupted and off duty meal and/or rest break.

8 22. On the occasions when Class Members worked over 10 hours in a shift, Defendants
9 also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a
10 result, Defendants' failure to provide Class Members with all legally required off-duty, unpaid
11 meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by
12 Defendants' business records, or lack thereof. Defendants also failed to pay Class Members
13 "premium pay," i.e. one hour of wages at each Class Member's effective hourly rate of pay, for
14 each meal period or rest break that Defendants failed to provide or deficiently provided.

15 23. Therefore, for at least four years prior to the filing of this action and through to the
16 present, Defendants have regularly required Class Members to work shifts in excess of five (5)
17 hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes,
18 and shifts in excess of (10) hours without providing them with second meal periods of not less
19 than thirty minutes; nor did Defendants pay Class Members "premium pay," i.e. one hour of
20 wages at each Class Member's effective hourly rate of pay, for each meal period that Defendants
21 failed to provide or deficiently provided.

22 24. Meal period violations thus occurred in one or more of the following manners:

23 (a) Class Members were not provided full thirty-minute duty free meal periods
24 for work days in excess of five (5) hours and were not compensated one (1)
25 hour's wages in lieu thereof, all in violation of, among others, Labor Code
26 §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage
27 Order(s);

28 (b) Class Members were not provided second full thirty-minute duty free meal

1 periods for work days in excess of ten (10) hours;

2 (c) Class Members were required to work through at least part of their daily
3 meal period(s);

4 (d) Meal periods were provided after five (5) hours of continuous work during
5 a shift; and

6 (e) Class Members were restricted in their ability to take a full thirty-minute
7 meal period.

8 25. Class Members were also not authorized and permitted to take lawful rest periods,
9 were systematically required by Defendants to work through or during breaks and were not
10 provided with one (1) hour's wages in lieu thereof. Class Members were restricted in their ability
11 to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest
12 periods. Therefore, from at least four years prior to the filing of this lawsuit and continuing to the
13 present, Defendants have consistently failed to provide Class Members with paid rest breaks of not
14 less than ten minutes for every work period of four or more consecutive hours; or major fraction
15 thereof, nor did Defendant pay Class Members premium pay for each day on which requisite rest
16 breaks were not provided or were deficiently provided.

17 26. Rest period violations therefore arose in one or more of the following manners:

18 (a) Class Members were required to work without being provided a minimum
19 ten (10) minute rest period for every four (4) hours or major fraction
20 thereof worked and were not compensated one (1) hour of pay at their
21 regular rate of compensation for each workday that a rest period was not
22 provided;

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

25 (c) Class Members were required to remain on-duty during rest periods or
26 otherwise had their rest periods interrupted by work demands.

27 27. Defendants also consistently failed to issue accurate itemized wage statements as
28 required by Labor Code § 226(a). Specifically, the wage statements fail to include the total hours

1 worked. Labor Code § 226(a)(2) requires that wage statements include the total hours worked by
2 the employee. Thus, the wage statements do not comply with Labor Code § 226(a)(2).
3 Additionally, the wage statements fail to provide the full name of the legal entity that is the
4 employer. Labor Code § 226(a)(8) requires that an employer shall provide wage statements with
5 the name and address of the legal entity that is the employer. However, Defendants failed to
6 provide its full name on the wage statements. Thus, the wage statements do not comply with
7 Labor Code § 226(a)(8). Moreover, the wage statements given to Class Members failed to
8 incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to
9 calculate and pay overtime compensation, sick pay, and meal and rest break premiums. Thus, the
10 wage statements do not provide accurate hourly rates for overtime and the statements do not
11 comply with Labor Code § 226(a)(9). Additionally, the wage statements given to Class Members
12 failed to accurately account for unpaid wages and overtime because Defendants had unlawfully
13 rounded time entries to the detriment of the Class Members and their actual hours worked were
14 under-reported due to off the clock work. Additionally, the wage statements given to Class
15 Members failed to accurately account for premium pay for deficiently provided meal periods and
16 rest breaks.

17 28. From at least four (4) years prior to filing this lawsuit and continuing to the present,
18 Defendants have thus also had a consistent policy of failing to pay all wages owed to Class
19 Members at the time of their termination of within seventy-two (72) hours of their resignation, as
20 required by California wage-and-hour laws. Specifically, Class Members were not paid all regular
21 and overtime wages because Defendants failed to pay for all hours worked, required off the clock
22 work, and unlawfully rounded time entries to the detriment of Class Members, and failed to
23 incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to
24 calculate and pay for overtime, sick pay, and meal and rest break premiums. Additionally,
25 Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as
26 further detailed in this Complaint. Defendants' failure to pay said wages within the required time
27 was willful within the meaning of Labor Code § 203.

28 29. Additionally, from at least four (4) years prior to the filing of this lawsuit and

1 continuing to the present, Defendants have regularly required Class Members to incur business
2 expenses in the course of performing their required job duties for Defendants including for cell
3 phone expenses. Upon information and belief, Class Members incurred similar costs. These
4 expenses incurred by Class Members were necessary and required of them in performing their
5 assigned job duties, but Defendants failed to reimburse Class Members for all such necessary
6 expenditures, thus entitling them to reimbursement according to proof as required under Labor
7 Code § 2802 and the applicable provisions of the IWC Wage Orders.

8 30. Defendants also violated California Labor Code § 246 by not providing all required
9 paid sick days to Plaintiffs and the aggrieved employees. Labor Code § 246 provides that an
10 Employee who “works in California for the same employer for 30 or more days within a year from
11 the commencement of employment is entitled to paid sick days as specified in this section.”
12 Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their
13 required and earned sick days, in violation of Labor Code § 246. Additionally and upon
14 information and belief, Defendants have failed to provide COVID-19 supplemental sick leave to
15 the Class members during the relevant time period, including by failing to provide two work
16 weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and
17 248.2 and including damages and penalties as these sections are enforced through Labor Code §
18 248.5, which requires that: “If paid sick days were unlawfully withheld, the dollar amount of paid
19 sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250),
20 whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars
21 (\$4,000), shall be included in the administrative penalty.” Plaintiffs accordingly seek this relief
22 available for Defendants’ failure to provide Employees with all their required and earned sick days
23 and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2,
24 and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1,
25 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees and
26 costs pursuant to Labor Code § 2699(g)(1).

27 31. In light of the foregoing, Plaintiff and Class Members bring this action pursuant to,
28 *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 248, 510, 512, 558,

558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802 and 2698 *et seq.* and California Code of Regulations, Title 8, section 11000 *et seq.*

32. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff 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

33. Plaintiff seeks 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 Class Member's regular rate of pay 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 Class Members 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 Class Member's regular rate of pay in lieu thereof.

e. Subclass 5. Wage Statement Subclass. All Class Members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

f. Subclass 6. 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.

g. Subclass 7: 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.

h. Subclass 8. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

i. Subclass 9. Expense Reimbursement Subclass. All Class Members who incurred necessary and reasonable expenses in connection with performing their job duties for Defendant and who were subject to a policy and/or practice under which such expenses were not reimbursed.

j. Subclass 10. 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.

34. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or 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.

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

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

///

1 **A. Numerosity**

2 37. The potential members of the class as defined are so numerous that joinder of all
3 the member of the class is impracticable. While the precise number of class member has not been
4 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
5 time period relevant to this lawsuit, hundreds of employees who satisfy the Class definition within
6 the State of California.

7 38. Accounting for employee turnover during the relevant time period increases this
8 number substantially. Plaintiff alleges that Defendants' employment records will provide
9 information as to the number and location of all Class Members.

10 **B. Commonality**

11 39. There are questions of law and fact common to the Class that predominates over
12 any questions affecting only individual Class Members. These common questions of law and fact
13 include:

- 14 a. Whether Defendants failed to pay Class Members minimum wages;
- 15 b. Whether Defendants failed to pay Class Members wages for all hours worked;
- 16 c. Whether Defendants failed to pay Class Members overtime as required under Labor
17 Code § 510;
- 18 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
19 IWC Wage Orders, by failing to provide Class Members with requisite meal
20 periods or premium pay in lieu thereof;
- 21 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
22 Orders, by failing to authorize and permit Class Members to take requisite rest
23 breaks or provide premium pay in lieu thereof;
- 24 f. Whether Defendants violated Labor Code § 226(a) by providing Class Members
25 with inaccurate wage statements;
- 26 g. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
27 wages and compensation due and owing at the time of termination of employment;
- 28 h. Whether Defendants' conduct was willful;

- i. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of Class Members' earned wages and work periods;
- j. Whether Defendants violated Labor Code § 1194 by failing to compensate all Class Members during the relevant time period for all hours worked, whether regular or overtime;
- k. Whether Defendants violated Labor Code § 204 by failing to timely pay wages;
- l. Whether Defendants violated Labor Code § 2802 by failing to reimburse all necessary business expenses Defendants required them to incur in performing their job duties;
- m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;
- n. Whether Class Members are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*; and
- o. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*

C. Typicality

40. The claims of the named plaintiff is typical of those of Class Members. The Class Members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

D. Adequacy of Representation

41. Plaintiff will fairly and adequately represent and protect the interest of the Class Members. Counsel who represents Class Members are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

42. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to all Class Members predominate over any questions affecting only individual Class Members. Each Class Member has been damaged and is entitled to recovery

1 by reason of Defendants' illegal policies or practices of failing to compensate Class Members
2 properly.

3 43. As to the issues raised in this case, a class action is superior to all other methods for
4 the fair and efficient adjudication of this controversy, as joinder of all Class Members is
5 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
6 Members. Further, as the economic or other loss suffered by vast numbers of Class Members may
7 be relatively small, the expense and burden of individual actions makes it difficult for the Class
8 Members to individually redress the wrongs they have suffered. Moreover, in the event
9 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
10 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
11 managing this case as a class action, and proceeding on a class-wide basis will permit Class
12 Members to vindicate their rights for violations they endured which they would otherwise be
13 foreclosed from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to
14 them.

15 44. Class action treatment will allow those persons similarly situated to litigate their
16 claims in the manner that is most efficient and economical for the parties and the judicial system.
17 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
18 Plaintiff contemplates the eventual issuance of notice to the proposed Class Members that would
19 set forth the subject and nature of the instant action. The Defendants' own business records can be
20 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
21 that any further notice is required additional media and/or mailings can be used.

22 45. Defendants, as prospective and actual employers of the Class Members, had a
23 special fiduciary duty to disclose to prospective Class Members the true facts surrounding
24 Defendants' pay practices, policies and working conditions imposed upon Class Members as well
25 as the effect of any alleged arbitration agreements that may have been forced upon them. In
26 addition, Defendants knew they possessed special knowledge about pay practices and policies,
27 most notably intentionally refusing to pay for all hours actually worked which should have been
28 recorded in Defendants' pay records and the consequence of the alleged arbitration agreements

1 and policies and practices on Class Members.

2 46. Class Members did not discover the fact that they were entitled to all pay under the
3 Labor Code until shortly before the filing of this lawsuit nor was there ever any discussion about
4 Plaintiff's and the Class' waiver of their Constitutional rights of trial by jury, right to collectively
5 organize and oppose unlawful pay practices under California law as well as obtain injunctive relief
6 preventing such practices from continuing. As a result, the applicable statutes of limitation were
7 tolled until such time as Plaintiff and the Class Members discovered their claims.

8 **FIRST CAUSE OF ACTION**
9 **FAILURE TO PAY MINIMUM WAGES**
10 **(Against All Defendants)**

11 47. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
12 full herein.

13 48. Defendants failed to pay Class Members minimum wages for all hours worked.
14 Defendants had a consistent policy of misstating Class Members' time records and failing to pay
15 Class Members for all hours worked. Class Members would work hours and not receive wages,
16 including as alleged above in connection with off the clock work and unlawful rounding of hours.
17 Additionally, Defendants failed to incorporate non-discretionary bonuses and/or commissions into
18 the regular rate of pay used to calculate and pay overtime. Defendants, and each of them, have
19 intentionally and improperly changed, adjusted and/or modified the hours of Class Members,
20 which resulted in off the clock work and underpayment of all wages owed to Class Members over
21 a period of time, while benefiting Defendants. During the relevant time period, Defendants thus
22 regularly failed to pay minimum wages to Class Members, to their detriment. Additionally,
23 Defendants had a consistent policy of failing to pay Class Members for hours worked during
24 alleged meal and rest periods for which Class Members were consistently denied, as also
25 addressed herein. Defendants' uniform pattern of unlawful wage and hour practices manifested,
26 without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy
27 and practice that denied accurate compensation to Class Members as to minimum wage pay.

28 49. In California, employees must be paid at least the then applicable state minimum

1 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
2 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
3 timely pay its employees for all hours worked. Defendants failed to do so.

4 50. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states:
5 “The minimum wage for employees fixed by the commission is the minimum wage to be paid to
6 employees, and the payment of a less wage than the minimum so fixed is unlawful.”

7 51. The applicable minimum wages fixed by the commission for work during the
8 relevant period is found in Paragraph 4(A)-4(D) of the IWC Wage Orders.

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

15 53. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
16 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
17 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
18 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
19 all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may
20 be used as a credit against a minimum wage obligation.

21 54. In committing these violations of the California Labor Code, Defendants
22 inaccurately recorded, or required Class Members to input times that did not reflect their actual
23 hours worked, or calculated the correct time worked and consequently underpaid the actual time
24 worked by Class Members. Defendants acted in an illegal attempt to avoid the payment of all
25 earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
26 Commission requirements and other applicable laws and regulations. As a result of these
27 violations, Defendant also failed to timely pay all wages earned in accordance with California
28 Labor Code § 1194.

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

5 56. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
6 1197.1, Class Members are entitled to recover a penalty of \$100.00 for the initial failure to timely
7 pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each
8 employee minimum wages.

9 57. Pursuant to California Labor Code § 1194.2, Class Members are further entitled to
10 recover liquidated damages in an amount equal to wages unlawfully unpaid and interest thereon.

11 58. Defendants have the ability to pay minimum wages for all time worked and have
12 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
13 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Class Members.

14 59. Wherefore, Class Members are entitled to recover the unpaid minimum wages
15 (including double minimum wages), liquidated damages in an amount equal to the minimum
16 wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant
17 to California Labor Code § 1194(a). Plaintiff and the other members of the Class further request
18 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
19 assessment of any statutory penalties against Defendants, in a sum as provided by the California
20 Labor Code, including § 558, and/or other applicable statutes.

21 **SECOND CAUSE OF ACTION**

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

23 **(Against All Defendants)**

24 60. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
25 full herein.

26 61. California Labor Code § 1194 provides that “any employee receiving less than the
27 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
28 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime

1 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
2 may be maintained directly against the employer in an employee's name without first filing a
3 claim with the Division of Labor Standards and Enforcement.

4 62. By their conduct, as set forth herein, Defendants violated California Labor Code §
5 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Class
6 Members: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8)
7 hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours
8 worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for
9 hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of
10 eight (8) hours on any seventh day of work in a workweek.

11 63. Defendants had a consistent policy of not paying Class Members wages for all
12 hours worked, including by requiring off the clock work and by unlawfully rounding down actual
13 hours worked as addressed above. Additionally, Defendants failed to incorporate non-
14 discretionary bonuses and/or commissions into the regular rate of pay used to calculate and pay
15 overtime. Defendants, and each of them, have intentionally and improperly rounded, changed,
16 adjusted and/or modified certain employees' hours, including Plaintiff's, in order to avoid paying
17 Class Members all earned and owed straight time and overtime wages and other benefits, in
18 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
19 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
20 have also violated these provisions by requiring Class Members to work through portions of their
21 meal period. Therefore, Class Members were not properly compensated, nor were they paid
22 overtime rates for hours worked in excess of eight hours in a given day, and/or forty hours in a
23 given week. Based on information and belief, Defendants did not make available to Class
24 Members a reasonable protocol for correcting time records when Class Members worked overtime
25 hours or to fix incorrect time entries or those that Defendants unlawfully rounded to the Class
26 Members' detriment.

27 64. Defendants' failure to pay Class Members the unpaid balance of regular wages
28 owed and overtime compensation, as required by California law, violates the provisions of Labor

1 Code §§ 510 and 1198, and is therefore unlawful.

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

15 66. Defendants’ failure to pay compensation in a timely fashion also constituted a
16 violation of California Labor Code § 204, which requires that all wages shall be paid
17 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
18 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
19 and overtime compensation earned by Class Members. Each such failure to make a timely
20 payment of compensation to Class Members constitutes a separate violation of California Labor
21 Code § 204.

22 67. Class Members have been damaged by these violations of California Labor Code
23 §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

24 68. Consequently, pursuant to the California Labor Code, including Labor Code §§
25 204, 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B),
26 Defendants are liable to Class Members for the full amount of all their unpaid wages and overtime
27 compensation, with interest, plus their reasonable attorneys’ fees and costs, as well as the
28 assessment of any statutory penalties against Defendants, and each of them, and any additional

1 sums as provided by the Labor Code and/or other statutes.

2 **THIRD CAUSE OF ACTION**

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

4 **(Against All Defendants)**

5 69. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
6 full herein.

7 70. Class Members regularly worked shifts greater than five (5) hours and in some
8 instances, greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ
9 someone for a shift of more than five (5) hours without providing him or her with a meal period of
10 not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or
11 her with a second meal period of not less than thirty (30) minutes.

12 71. Defendants failed to provide Class Members with meal periods as required under
13 the Labor Code. Defendants placed their needs over Class Members lawful meal breaks and this
14 resulted in Class Members consistently having to work through their scheduled meal breaks
15 because the demands of the job would not avail them the opportunity to take a lawfully
16 uninterrupted and off-duty meal break. Furthermore, upon information and belief, on the occasions
17 when Class Members worked more than ten (10) hours in a given shift, they did so without
18 receiving a second uninterrupted thirty (30) minute meal period as required by law.

19 72. Defendants thus failed to provide Class Members with meal periods as required by
20 the Labor Code, including by not providing them with the opportunity to take meal breaks, by
21 providing them late or for less than thirty (30) minutes, or by requiring them to perform work
22 during breaks.

23 73. Moreover, Defendants failed to compensate Class Members for each meal period
24 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of
25 the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee
26 a meal period in accordance with this section, the employer shall pay the employee one (1) hour of
27 pay at the employee's regular rate of compensation for each workday that the meal period is not
28 provided. Defendants failed to compensate Class Members for each meal period not provided or

1 inadequately provided, as required under Labor Code § 226.7.

2 74. Therefore, pursuant to Labor Code § 226.7 and the applicable IWC Wage Order,
3 paragraph 11, Class Members are entitled to damages in an amount equal to one (1) hour of wages
4 at their effective hourly rates of pay for each meal period not provided or deficiently provided, a
5 sum to be proven at trial, as well as the assessment of any statutory penalties against the
6 Defendants, and each of them, in a sum as provided by the Labor Code and other statutes.

7 **FOURTH CAUSE OF ACTION**

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

9 **(Against All Defendants)**

10 75. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

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

15 77. Class Members consistently worked consecutive four (4) hour shifts and were
16 generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to
17 authorize and permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC
18 Wage Order, Class Members were entitled to paid rest breaks of not less than ten (10) minutes for
19 each consecutive four (4) hour shift, and Defendants failed to provide Class Members with timely
20 rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants
21 placed their needs over Class Members lawful rest breaks and this resulted in Class Members
22 consistently having to work through their scheduled rest breaks because the demands of the job
23 would not avail them the opportunity to take a lawfully uninterrupted and off-duty rest break.
24 Thus, Class Members were consistently denied of their rest breaks.

25 78. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
26 provide that if an employer fails to provide an employee rest period in accordance with this
27 section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
28 compensation for each workday that the rest period is not provided.

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

4 80. Defendants failed to authorize and permit Class Members to take rest periods, as
5 required by the Labor Code. Moreover, Defendants did not compensate Class Members with an
6 additional hour of pay at each Class Member's effective hourly rate for each day that Defendants
7 failed to provide them with adequate rest breaks, as required under Labor Code § 226.7.

8 81. Therefore, pursuant to Labor Code § 226.7 and paragraph 12 of the applicable IWC
9 Wage Orders, Class Members are entitled to damages in an amount equal to one (1) hour of wages
10 at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to
11 be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each
12 of them, in a sum as provided by the Labor Code and/or other statutes.

13 **FIFTH CAUSE OF ACTION**
14 **VIOLATION OF LABOR CODE § 226(a)**
15 **(Against All Defendants)**

16 82. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
17 full herein.

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

25 84. Defendants failed to provide Class Members with accurate itemized wage
26 statements in writing, as required by the Labor Code. Specifically, the wage statements fail to
27 include the total hours worked. Labor Code § 226(a)(2) requires that wage statements include the
28 total hours worked by the employee. Thus, the wage statements do not comply with Labor Code §

226(a)(2). Additionally, the wage statements fail to provide the full name of the legal entity that is the employer. Labor Code § 226(a)(8) requires that an employer shall provide wage statements with the name and address of the legal entity that is the employer. However, Defendants failed to provide its full name on the wage statements. Thus, the wage statements do not comply with Labor Code § 226(a)(8). Moreover, the wage statements given to Class Members failed to incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to calculate and pay overtime compensation, sick pay, and meal and rest break premiums. Thus, the wage statements do not provide accurate hourly rates for overtime and the statements do not comply with Labor Code § 226(a)(9). Additionally, the wage statements given to Class Members failed to accurately account for unpaid wages and overtime because Defendants had unlawfully rounded time entries to the detriment of the Class Members and their actual hours worked were under-reported due to off the clock work. Additionally, the wage statements given to Class Members failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

85. Throughout the liability period, Defendants intentionally failed to furnish to Class Members, upon each payment of wages, itemized statements accurately showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) 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, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor Code § 226, amongst other statutory requirements. Defendants knowingly and intentionally failed to provide Class Members with such timely and accurate wage and hour statements.

86. Class Members suffered injury as a result of Defendants' knowing and intentional failure to provide them with the accurate wage and hour statements as required by law and are presumed to have suffered injury and be entitled to penalties under Labor Code § 226(e), as the

Defendants have failed to provide wage statements with accurate and complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, 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.

87. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code § 226(a), Class Members 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.

88. Pursuant to Labor Code §§ 226(a) and 226(e) and 1174, and the applicable IWC Wage Order, paragraph 7(B), 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). They are also entitled to an award of costs and reasonable attorneys’ fees.

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

89. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

90. Numerous Class Members are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

91. Defendants failed to pay these Class Members all wages due and certain at the time of termination or within seventy-two (72) hours of resignation.

92. The wages withheld from these Class Members by Defendants remained due and owing for more than thirty (30) days from the date of separation from employment.

93. Defendants failed to pay Class Members without abatement, all wages as defined by applicable California law. Specifically, Class Members were not paid all regular and overtime wages because Defendants failed to pay for all hours worked, required off the clock work, and unlawfully rounded time entries to the detriment of Class Members, and failed to incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to calculate and pay for overtime, sick pay, and meal and rest break premiums. Additionally, 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.

94. Defendants' failure to pay wages, as alleged entitles these Class Members to penalties under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

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

95. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

96. 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,

1 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
2 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment of
3 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
4 calendar days following the close of the payroll period.” As detailed above, Defendants
5 maintained a consistently applied policy and practice of not paying all wages earned between the
6 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
7 between the 16th and the last day of the month between the 1st and 10th day of the following month.
8 Defendants similarly failed to pay all wages earned by not more than seven calendar days
9 following the close of the payroll period. These failures all arose from either Defendants’ failure to
10 pay for all hours worked or failure to pay all earned commission wages.

11 97. All wages due and owing to Plaintiff and the Class Members, including as required
12 under Labor Code § 510, were therefore not timely paid by Defendants, as addressed in detail
13 above. Additionally, wages required by Labor Code § 1194 and other sections became due and
14 payable to each Class Member in each pay period that he or she was not provided with a meal
15 period or rest period or paid straight or overtime wages or commissions to which he or she was
16 entitled.

17 98. Defendants thus violated Labor Code § 204 by systematically refusing to pay
18 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
19 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
20 payday for the period involved, not less than the applicable minimum wage for all hours worked in
21 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
22 hours than those fixed by the order or under conditions of labor prohibited by the order is
23 unlawful.” Plaintiff and the Class Members may therefore pursue damages and penalties for
24 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
25 penalties under paragraph 20 of the applicable IWC Wage Orders.

26 99. As a result of the unlawful acts of Defendants, Plaintiff and Class Members seek to
27 represent they have been deprived of wages in amounts to be determined at trial, and they are
28 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.

EIGHTH CAUSE OF ACTION

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

(Against All Defendants)

100. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

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

102. During the course of Plaintiff's and Class Members' employment, Defendants consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as required by California Labor Code § 1174 by failing to pay Plaintiff and Class Members proper wages, overtime, and premium pay as discussed above.

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

NINTH CAUSE OF ACTION

REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802

(Against All Defendants)

104. Plaintiff re-alleges and incorporates all preceding paragraphs as though set forth in full herein.

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

106. Defendants have regularly required Class Members to incur business expenses in the course of performing their required job duties for Defendants including for cell phone expenses.

1 These expenses incurred by Class Members were necessary and required of them in performing their
2 assigned job duties, but Defendants failed to reimburse Class Members for all such necessary
3 expenditures. Class Members were not reimbursed for those lawful and necessary work related
4 expenses or losses incurred in direct discharge of their job duties during employment with
5 Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the
6 applicable IWC Wage Orders, paragraph 9.

7 107. As a result of the unlawful acts of Defendants, Class Members have been deprived
8 of reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
9 plus interest and penalties thereon, attorneys' fees, and costs.

10 **TENTH CAUSE OF ACTION**

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

12 **(Against All Defendants)**

13 108. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
14 full herein.

15 109. Plaintiff, on behalf of herself, Class Members, and the general public, brings this
16 claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as
17 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Class
18 Members and the general public. Plaintiff seeks to enforce important rights affecting the public
19 interest within the meaning of Code of Civil Procedure § 1021.5.

20 110. Plaintiff is a "person" within the meaning of Business & Professions Code
21 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
22 relief, restitution, and other appropriate equitable relief.

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

1 requirements in violation of California Business and Professions Code §§ 17200, *et seq.*, and for
2 which this Court should issue injunctive and equitable relief, pursuant to California Business &
3 Professions Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

23 116. By the conduct alleged herein, Defendants have engaged and continue to engage in
24 a business practice which violates California and federal law, including but not limited to, the
25 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
26 Code including Sections 203, 204, 226, 226.7, 512, 1194, 1197, and 1198, for which this Court
27 should issue declaratory and other equitable relief pursuant to California Business & Professions
28 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair

1 competition, including restitution of wages wrongfully withheld.

2 117. As a proximate result of the above-mentioned acts of Defendants, Class Members
3 have been damaged, in a sum to be proven at trial.

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

11 **ELEVENTH CAUSE OF ACTION**
12 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***
13 **(Against All Defendants)**

14 119. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
15 full herein.

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

20 121. In failing to pay Aggrieved Employees minimum wages and overtime, failing to
21 provide accurate itemized wage statements, and failing to pay Employees wages upon termination
22 or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved
23 Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also
24 failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved
25 Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage
26 Orders.

27 122. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
28 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5,

1 including the penalty provisions, without limitation, based, inter alia, on the following California
2 Labor Code sections: 201, 202, 203, 204, 210, 226, 226.3, 510, 558, 558.1, 1174, 1174.5, 1182.12,
3 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, and 2698 *et seq.*

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

9 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
10 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
11 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
12 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
13 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
14 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
15 to Labor Code § 2699(g)(1);

16 (b) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
17 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
18 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
19 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
20 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
21 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
22 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
23 providing inaccurate wage statements and failing to maintain records as required under Labor
24 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
25 Code §226.3, which in addition to other penalties provided by law, subjects Defendants to "a
26 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
27 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
28 citation, ...";

1 (c) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
2 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
3 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
4 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
5 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
6 § 2699(g)(1);

7 (d) Failure to Reimburse Necessary Business Expenses: For Defendants' failure to
8 reimburse the necessary work related expenses incurred under Labor Code §§ 1197, 1197.1, 1198,
9 and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil
10 penalties available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5,
11 and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs
12 pursuant to Labor Code § 2699(g)(1);

13 (e) All Alleged Violations of the IWC Wage Orders and Other Labor Code
14 Sections: For any above addressed violation of the applicable provisions of the IWC Wage
15 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §
16 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and
17 paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to
18 Labor Code § 2699(g)(1).

19 124. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also
20 seek the penalties and remedies set forth in Labor Code § 558, which states:

21 (a) Any employer or other person acting on behalf of an employer who violates, or
22 causes to be violated, a section of this chapter or any provision regulating hours and days of work
23 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1)
24 For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
25 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
26 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
27 each pay period for which the employee was underpaid in addition to an amount sufficient to
28 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.

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

3 125. Plaintiff has exhausted her administrative remedies by sending a certified letter to
4 the LWDA and Defendants postmarked on **July 14, 2023** addressing in detail the specific
5 provisions of the Labor Code Defendants have violated and addressing the facts and legal theories
6 to support the alleged violations and requested penalties. The LWDA has not provided notice of
7 its intent to investigate the alleged violations within 65 calendar days of the postmark date of the
8 letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed
9 herein and in the PAGA Notice letter and the original Complaint

10 **RELIEF REQUESTED**

11 WHEREFORE, Plaintiff prays for the following relief:

- 12 1. For an order certifying this action as a class action;
- 13 2. For compensatory damages in the amount of the unpaid minimum wages for work
14 performed by Class Members and unpaid overtime compensation from at least four (4) years prior
15 to the filing of this action, as may be proven;
- 16 3. For liquidated damages in the amount equal to the unpaid minimum wage and
17 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 18 4. For compensatory damages in the amount of all unpaid wages, including overtime
19 and double-time pay, as may be proven;
- 20 5. For compensatory damages in the amount of the hourly wage made by Class
21 Members for each missed or deficient meal period where no premium pay was paid therefor from
22 four (4) years prior to the filing of this action, as may be proven;
- 23 6. For compensatory damages in the amount of the hourly wage made by Class
24 Members for each day requisite rest breaks were not provided or were deficiently provided where
25 no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as
26 may be proven;
- 27 7. For penalties pursuant to Labor Code § 226(e) for Class Members, as may be
28 proven;
8. For penalties pursuant to Labor Code § 203 for all Class Members who quit or were

1 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

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

4 10. For restitution and/or damages for all amounts unlawfully withheld from the wages
5 for all Class Members in violation of Labor Code § 2802, as may be proven;

6 11. For restitution for unfair competition pursuant to Business & Professions Code
7 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

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

11 13. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

12 14. For other wages and penalties under the Labor Code as may be proven;

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

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

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

16 18. For an award of attorneys' fees; and

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

18
19 DATED: September 15, 2023

D.LAW, INC.

20
21 By: 

David Yeremian

Natalie Haritonian

Attorneys for Plaintiff NELIDA BARAJAS,
and all others similarly situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

DATED: September 15, 2023

D.LAW, INC.

By: 
David Yeremian
Natalie Haritonian
Attorneys for Plaintiff NELIDA BARAJAS,
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 880 E Broadway, Glendale, CA 91205.

Tanya M. Schierling
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 JingY. Li
jli@swsslw.com
SOLOMON WARD SEIDENWURM & SMITH, LLP
 401 B Street, Suite 1200
 San Diego, California 92101

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, 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.

[X] COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

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

[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 September 15, 2023, at Glendale, California.

Natalia Bermudes