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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco  
**09/18/2023**  
Clerk of the Court  
BY: WILLIAM TRUPEK  
Deputy Clerk

Attorneys for Plaintiff RAUL B. IBARRA,  
on behalf of himself and all others similarly situated

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

RAUL B. IBARRA, an individual, on behalf  
of himself and others similarly situated,

Plaintiff,

vs.

STEPHENS INSTITUTE, a California  
corporation; and DOES 1 through 50,  
inclusive,

Defendants.

Case No.: CGC-23-607667

**CLASS ACTION**

Assigned for Case Management Purposes To:  
Hon. Ethan P. Schulman  
Dept.: 304

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for All Hours Worked;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability 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 § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
10. Failure to Produce Requested Employment Records under Labor Code §§ 226, 1198.5;
11. Failure to Reimburse Necessary Business Expenses under Labor Code § 2802;
12. Violation of Business & Professions Code § 17200 *et seq.*; and
13. Penalties under PAGA, Labor Code § 2698.

**DEMAND FOR JURY TRIAL**

Original Complaint Filed: July 14, 2023  
Trial Date: None Set

1 Plaintiff RAUL B. IBARRA (hereinafter “Plaintiff”), on behalf of himself and all other  
2 similarly situated non-exempt, hourly university employees employed by Defendants in California  
3 during the relevant period (collectively, “Employees”; individually, “Employee”) complains of  
4 Defendants as follows:

### 5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of himself and all current and former  
7 Employees within the State of California who, at any time four years prior to the filing of this  
8 lawsuit, are or were employed as non-exempt, hourly university employees by Defendants  
9 STEPHENS INSTITUTE, a California Corporation, and DOES 1 through 50 (all defendants being  
10 collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants violated various  
11 provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission  
12 (IWC), and California Business & Professions Code, and seeks redress for these violations.

13 2. Defendant STEPHENS INSTITUTE is the registrant for and does business as the  
14 ACADEMY OF ART UNIVERSITY (“AAU”), located in San Francisco. Plaintiff and the Class  
15 members worked as hourly, non-exempt university employees of AAU. Plaintiff worked as a  
16 financial aid representative, and was similarly situated with the other university employees  
17 employed by Defendants in similar positions and capacities, including admissions, housing,  
18 athletics administration, student records and the like. Plaintiff was generally employed by  
19 Defendants throughout his employment based out of Defendants’ campus and office facilities in  
20 San Francisco, and he and others have also worked remotely for various durations during the  
21 relevant time period. Plaintiff worked at Defendants’ behest without being paid all wages due and  
22 without being provided all required breaks. More specifically, Plaintiff and the other similarly  
23 situated Class members were employed by Defendants and (1) shared similar job duties and  
24 responsibilities (2) were subjected to the same policies and practices (3) and endured similar  
25 violations at the hands of Defendants as the other Employee Class members who served in similar  
26 and related positions.

27 3. Defendants required Plaintiff and the Employees in the Class to work off the clock  
28 and failed to record accurate time worked by these Employees, failed to pay them at the

1 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or  
2 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that  
3 prevented them from learning of these unlawful pay practices. Defendants also failed to provide  
4 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain  
5 under Defendants' control and were not provided with the opportunity to take full uninterrupted,  
6 timely, and duty-free rest periods and meal breaks, as required by the Labor Code and the  
7 applicable paragraphs of the IWC Wage Orders.

8         4. Defendant STEPHENS INSTITUTE (d/b/a ACADEMY OF ART UNIVERSITY)  
9 is a California corporation and university/college offering degrees in undergraduate and graduate  
10 level curriculum, including programs in acting, advertising, art education, and animation. AAU's  
11 website explains it is "first and foremost a professional school—a specialized place that helps you  
12 master your craft as you prepare for professional roles as artists and designers. Our hands-on, no-  
13 nonsense curriculum is taught by some of the finest minds working in today's creative and  
14 innovative industries." AAU also claims to be "one of the largest private, accredited art and design  
15 schools in the nation." STEPHENS INSTITUTE lists an address with the California Secretary of  
16 State in San Francisco, California, and it operates classroom and other facilities and offices there  
17 and in San Francisco County as AAU. STEPHENS INSTITUTE is listed as the employer on wage  
18 statements provided to Plaintiff, and upon information and belief the other Class members.

19         5. This Court has jurisdiction over this Action pursuant to California Code of Civil  
20 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought  
21 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California  
22 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district  
23 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the  
24 obligations and liabilities giving rise to this lawsuit occurred, at least in large part in San Francisco  
25 County where Defendant operates and maintains classrooms, facilities, and offices, and  
26 Defendants have operated in San Francisco County where Plaintiff and the other Class members  
27 were employed.

28         6. The true names and capacities, whether individual, corporate, associate, or

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

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

#### 19                                   **FACTUAL BACKGROUND**

20         8. The Employees who comprise the Class, including Plaintiff, are non-exempt  
21 employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare  
22 Commission (“IWC”). During the period of four years prior to the filing of this action through its  
23 resolution, Plaintiff and the Class members were either not paid by Defendants for all hours  
24 worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also  
25 contends that Defendants failed to pay Plaintiff and the Class members all wages due and owing,  
26 including by rounding and time shaving and requiring off the clock work, failed to provide meal  
27 and rest breaks, and failed to furnish accurate wage statements and timely pay all wages owed, all  
28 in violation of various provisions of the California Labor Code and applicable paragraphs of the

1 IWC Wage Orders.

2 9. During the course of Plaintiff and the Class members' employment with  
3 Defendants, they were not paid all wages they were owed, including for all work performed  
4 (resulting in "off the clock" work) and for all their overtime hours worked. This has resulted in  
5 systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders.  
6 Upon information and belief, Defendants employ other non-exempt, hourly employees as  
7 university workers at Defendants' facilities and offices in California.

8 10. Plaintiff was generally scheduled to work shifts of 8 to 9 hours and for five days  
9 per work week. Despite Defendants' efforts to prevent overtime, Employees worked longer than  
10 their scheduled shifts and for which they were actually paid, including due to off the clock work  
11 and rounding and managers time shaving from timekeeping records.

12 11. Timekeeping was inefficient and unreliable. Defendants maintained the systems  
13 and capabilities to monitor timekeeping through electronic time clocks or computer systems that  
14 would have recorded shift and meal period start and end times accurately to the minute.  
15 Defendants chose not to utilize such timekeeping systems in favor of requiring Plaintiff to write  
16 down his start and end times on a paper timekeeping sheets. To make matters worse, Defendants  
17 instructed and compelled Plaintiff not to record actual start and end times or other times he was  
18 working or under Defendants' control on the paper timesheets. Instead, he was instructed to write  
19 in his scheduled hours and would be reprimanded if he did not.

20 12. Defendants' managers would then take whatever manual timekeeping entries  
21 Plaintiff recorded and turned in for the work week and make adjustments and edits to them to  
22 deduct or round away or shave hours worked to conform to his scheduled times rather than his  
23 actual times. Thus, Plaintiff submitted his timesheets and Defendants' managers would round or  
24 shave away hours before they were inputted into the payroll system for processing. Wage  
25 statements reflect rounding down to at least the nearest quarter hour, and Plaintiff would always  
26 notice that he was being paid for substantially less hours than he worked. Upon information and  
27 belief, Plaintiff's co-workers endured similar violations at Defendants' hands.

28 13. In addition to the hours rounded or shaved away from Plaintiff's hours worked,

1 Plaintiff was also required to work off the clock for extended periods each week. Defendants  
2 policy of avoiding overtime necessitated that Plaintiff work off the clock after the completion of  
3 his scheduled shift time to answer calls and questions and to perform other job-related  
4 requirements. Plaintiff was also required to arrive before his shift start time to be prepared to  
5 begin work at his scheduled time. He was expected to perform job related tasks and to prepare his  
6 computer and workstation and phones and the like for the scheduled start time. Plaintiff was also  
7 contacted after hours or was otherwise required to respond to work related e-mails and messages  
8 during times when he was off duty. This time under Defendants' control was all uncompensated  
9 and Defendants also followed a uniform policy of rounding away to the nearest quarter hour his  
10 time entries so that they would conform generally to his shift schedule. Upon information and  
11 believe, the other Class members also were also required to endure rounding and time shaving  
12 and similar off the clock work.

13 14. Defendants' policy of discouraging and preventing overtime also led to further off  
14 the clock work at the end of work shifts which should have been paid at overtime rates. Plaintiff  
15 and the Class members were also required to work before shifts as addressed above and  
16 accordingly should have begun incurring overtime premium wages sooner in their shifts than  
17 their timekeeping records reflected when time extended past eight hours. Additionally, given the  
18 prohibition on overtime and the job requirements and demands, Plaintiff was compelled on  
19 occasion to clock out at the end of his scheduled work period and continue working off the clock.  
20 Defendants' also contacted Plaintiff during meal periods to respond to work demands and he was  
21 otherwise required to remain under Defendants' control without receiving compensation. As  
22 Defendants did not permit the Employees to review any of their timekeeping entries after they  
23 were submitted, Plaintiff had no way of knowing if his hours were being accurately recorded and  
24 paid for payroll purposes. Upon information and belief, other Class members endured similar off  
25 the clock work and rounding and failure to pay overtime and for all hours worked at the  
26 applicable rates as Plaintiff.

27 15. Plaintiff was therefore not paid for all his hours worked at the required minimum,  
28 overtime and double time wage rates due to Defendants' policy and practice of requiring him to

1 work off the clock and without pay and by unlawful rounding of hours, and Defendants thus also  
2 failed to keep required records of hours worked. Defendants also failed to pay Plaintiff at the  
3 required overtime rates for all hours over eight in a shift, or over forty in a work week. With work  
4 shifts generally scheduled for eight hours or more, this unpaid off the clock work resulted in  
5 Plaintiff and the Class members working past eight hours on a shift, which required that they be  
6 paid at the correct overtime rate of 1.5 times their regular rate. The hours reflected on Plaintiff's  
7 wage statements rarely comported with his own records or recollection of them. Plaintiff  
8 remained confused as to how his overtime was calculated and paid, and was compelled to simply  
9 look to ensure he was paid at least 40 hours for each week as scheduled.

10         16. Defendants thus systematically underpaid Plaintiff and the Class members by  
11 failing to pay them at the required overtime rates for all hours over eight in a work shift or over  
12 forty in a work week, and all hours over twelve in a day at the required double time rate. Upon  
13 information and belief, the Class members were bound by similar scheduling and work policies  
14 and endured similar violations at Defendants' hands as Plaintiff.

15         17. Defendants have either failed to maintain timekeeping records for Plaintiff that  
16 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants  
17 required and the actual hours Plaintiff worked or the breaks he received or have otherwise  
18 declined to produce them to Plaintiff in response to a timely and lawful records request. By  
19 failing to pay for all hours worked, and by rounding regular hours to the substantial detriment of  
20 the Class members to conform generally to scheduled shift times, and by failing to record  
21 accurate meal period beginning and ending times, Defendants have committed knowing and  
22 intentional ongoing violations of the record keeping requirements under the Labor Code,  
23 including section 1174. Additionally, to the extent Defendants paid overtime, it was underpaid as  
24 addressed above or Defendants failed to include all forms of remuneration in the regular rate used  
25 to calculate and pay overtime wages, thus resulting in further underpayment of wages earned by  
26 Plaintiff and the Class members.

27         18. The failure to pay for all hours worked and underpayment of wages to Plaintiff  
28 and the Class members is and has been a direct consequence of Defendants' unlawful

1 compensation policies and practices, which upon information and belief applied uniformly to the  
2 Class members working at Defendants' offices and facilities. As a result of the above-described  
3 unlawful requirements to work off the clock and unlawful rounding, the failure to accurately  
4 record all hours worked and pay wages at the correct rates, and the other wage violations they  
5 endured at Defendants' hands, Plaintiff and the Class members were not properly paid all wages  
6 earned and all wages owed to them by Defendants, including when working more than eight  
7 hours in any given day and/or more than forty hours in any given week.

8         19. Therefore, from at least four years prior to the filing of this lawsuit and continuing  
9 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all  
10 hours worked and failing to pay minimum wages for all time worked, as required by California  
11 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,  
12 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation  
13 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a  
14 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of  
15 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

16         20. Defendants also failed to provide Plaintiff and the Class members with their  
17 required meal periods and the at least two ten-minute rest breaks required for scheduled shifts of  
18 eight hours. The above described off the clock work contributed to Defendants' common policy  
19 of failing to provide lawful meal periods to Plaintiff and the Class members, as required under the  
20 Labor Code and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically  
21 failed to authorize and permit Plaintiff and the employee Class Members to take all required 10-  
22 minute rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage  
23 Order(s).

24         21. Plaintiff and the Class members generally worked shifts that entitled them to  
25 receive at least one meal period and two rest breaks. However, Defendants failed to provide all  
26 required meal periods and rest breaks to them. Defendants' uniformly applied policies and  
27 practices systematically failed to provide required duty-free meal periods to Plaintiff and the  
28 Class members. Instead, Plaintiff and the Class members were expected to continue working



1 throughout their shifts and were often unable to take full, timely, duty-free 30-minute meal  
2 periods. On the occasions when they were permitted to take a meal break, it was often well after  
3 the fifth hour of work from the shift start time. Given work demands and management pressure,  
4 meal periods were often provided for shorter duration and were after five hours into a work shift  
5 or were otherwise shortened unlawfully. Further systematic violations occurred by Defendants'  
6 policy of requiring Plaintiff and other similarly situated Class members to remain under  
7 Defendants' control and respond to work demands or telephone calls and the like. If and when  
8 Plaintiff was able to attempt to take a meal break, it was therefore also not duty-free. Defendants  
9 therefore failed to provide meal periods, provided them untimely, or else provided impermissibly  
10 shortened meal periods where employees remained on-call to perform duties when needed and  
11 had to hurry back to work. Upon information and belief, the Class members endured similar meal  
12 period violations at Defendants' hands. On the occasions when Plaintiff and the Class members  
13 worked over ten hours on a shift, Defendants failed to provide them with a second uninterrupted  
14 and duty-free and timely meal period.

15         22. Defendants thus failed to provide all the legally required unpaid, off-duty meal  
16 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class  
17 members, as required by the applicable Wage Order and Labor Code. Defendants did not have a  
18 policy or practice which provided or accurately recorded all the legally required unpaid, off-duty  
19 meal periods and all the legally required paid, off-duty rest periods to Employees. Plaintiff and  
20 other Class members were required to perform work as ordered by Defendants or otherwise  
21 remain under Defendants' control for more than five hours during a shift, or ten hours in a shift,  
22 but were often required to do so without receiving a lawful, timely, and duty-free 30-minute meal  
23 breaks. Additionally, as addressed above, Defendants followed a practice of requiring off the  
24 clock work, in a manner that would impact when Employees were to receive meal periods and  
25 rest breaks, thus leading to further violations.

26         23. As a result, Defendants' failure to provide Plaintiff and the Class members with all  
27 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest  
28 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants have

1 either failed to maintain required records of when meal periods were actually provided or failed to  
2 produce them in response to Plaintiff's timely and lawful requests, or else maintained inaccurate  
3 and incomplete records. Defendants also failed to pay Employees "premium pay," i.e. one hour of  
4 wages at each Employee's effective hourly rate of pay, for each meal period or rest break that  
5 Defendants failed to provide or deficiently provided. Upon information and belief, if and when  
6 Defendants did pay any meal period premiums, they failed to include all forms of remuneration in  
7 the regular rate used to calculate and pay it.

8         24. Therefore, for at least four years prior to the filing of this action and through to the  
9 present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise not  
10 provided with the opportunity to take required meal breaks due to Defendants' policies and  
11 practices. On the occasions when Plaintiff and the Class members were provided with a meal  
12 period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were  
13 not provided with one hour's wages in lieu thereof. Meal period violations thus occurred in one or  
14 more of the following manners:

- 15                 (a) Class members were not provided full thirty-minute duty free meal periods  
16                         for work days in excess of five hours and were not compensated one hour's  
17                         wages in lieu thereof, all in violation of, among others, Labor Code §§  
18                         226.7, 512, and the applicable Industrial Welfare Commission Wage  
19                         Order(s);
- 20                 (b) Class members were not provided second full thirty-minute duty free meal  
21                         periods for work days in excess of ten hours;
- 22                 (c) Class members were required to work through at least part of their daily  
23                         meal period(s);
- 24                 (d) Meal periods were provided after five hours of continuous work during a  
25                         shift; and
- 26                 (e) Class members were restricted in their ability to take a full thirty-minute  
27                         meal period or were otherwise required to remain under Defendants'  
28                         control during meal periods.

1           25. Defendants also failed to authorize and permit Plaintiff and the Class members to  
2 take duty-free, net ten minute rest breaks for every four hours of shift work, or major fraction  
3 thereof. There were similar issues with the required net ten-minute rest breaks that Plaintiff and  
4 the Class members were unable to take as with meal periods. This was exacerbated by the fact  
5 that Defendants made little efforts to schedule and otherwise authorize and permit Plaintiff and  
6 the Class members to take their required duty-free, net ten-minute rest periods. Defendants'  
7 management did not emphasize the requirement to provide at least one ten-minute duty-free rest  
8 period for each four-hour duty period, or major fraction thereof. If and when Plaintiff was  
9 permitted to take a ten-minute rest break on a shift, he was not permitted to take a second one or a  
10 third one or any breaks were untimely or impermissibly shortened. Further violations occurred as  
11 Plaintiff and the Class members were required to remain under Defendants' control by not being  
12 able to leave the premises and by Defendants' requirement that they remain ready to respond to  
13 calls regarding work requirements and job demands.

14           26. Therefore, Defendants failed to authorize and permit Class members to take all  
15 their required rest breaks. Plaintiff and the other similarly situated Class members were either not  
16 authorized permitted the opportunity to take a rest break, or were required to remain under  
17 Defendants' control and respond to instructions and job demands. Defendants also failed to  
18 authorize and permit Employees to leave the property premises during rest breaks, or else  
19 prevented them from doing so, thus further evidencing Defendants' policy and practice of  
20 requiring Plaintiff and the Class members to remain under their control during required off-duty  
21 rest breaks.

22           27. Defendants' policies and practices thus systematically deny and denied Plaintiff  
23 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal  
24 periods. The California Supreme Court has instructed that the rest period requirement obligates  
25 employers to permit and authorize employees to take-off-duty rest periods. That is, during rest  
26 periods employers must relieve employees of all duties and relinquish control over how  
27 employees spend their time. Plaintiff and the Class members were and are under Defendants'  
28 control when they are working through rest breaks, and Defendants failed to schedule or account

1 for required first, second, and third rest breaks during the shifts Plaintiff and the Class members  
2 generally worked.

3 28. Plaintiff and the Employees in the Class were not authorized and permitted to take  
4 lawful rest periods, were systematically required by Defendants to work through or during breaks,  
5 and were not provided with one hour's wages in lieu thereof. They were required to remain on  
6 duty during breaks or portions of their breaks, thus making them either untimely or shortened and  
7 on-duty, and they were also prevented from leaving the premises during rest breaks under  
8 Defendants' policies and practices. Rest period violations therefore arose in one or more of the  
9 following manners:

- 10 (a) Class members were required to work without being provided a minimum  
11 ten minute rest period for every four hours or major fraction thereof  
12 worked and were not compensated one hour of pay at their regular rate of  
13 compensation for each workday that a rest period was not provided, and to  
14 the extent Defendants paid any premiums, they failed to include all forms  
15 of remuneration in the regular rate used to calculate and pay them.
- 16 (b) Class members were not authorized and permitted to take timely rest  
17 periods for every four hours worked, or major fraction thereof; and
- 18 (c) Class members were required to remain on duty and under Defendants'  
19 control during rest periods or otherwise had their rest periods interrupted  
20 by work demands.

21 29. From at least four years prior to the filing of this lawsuit and continuing to the  
22 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or  
23 deducting the Employees' earned wages, including by the above-described time shaving and  
24 rounding and off the clock work before and after work shifts and automatically deducting hours  
25 for unpaid meal periods Defendants failed to provide. By not compensating Employees for all  
26 hours worked, and not recording any break times or permitting off-duty breaks, Defendants  
27 unlawfully deducted wages earned by and owed to Plaintiff and the Class members, in violation of  
28 Labor Code § 221.

1           30. As a result of the above described illegal policies and practices, Defendants  
2 engaged in and enforced the following additional unlawful practices and policies against Plaintiff  
3 and the Class members he seeks to represent:

- 4           (a) failing to pay all wages owed to Class members who either were  
5 discharged, laid off, or resigned in accordance with the requirements of  
6 Labor Code §§ 201, 202, 203;
- 7           (b) failing to pay all wages owed to the Class members twice monthly in  
8 accordance with the requirements of Labor Code § 204;
- 9           (c) failing to pay Class members all wages owed, including all meal and rest  
10 period premium wages;
- 11           (d) failing to maintain accurate records of Class members' earned wages and  
12 meal periods in violation of Labor Code §§ 226 and 1174(d) and section 7  
13 of the applicable IWC Wage Orders; and
- 14           (e) failing to produce timekeeping records in response to Plaintiff's timely and  
15 lawful request to receive them under these authorities.

16           31. From at least four years prior to the filing of this lawsuit, and continuing to the  
17 present, Defendants have also consistently failed to provide Employees with timely, accurate, and  
18 itemized wage statements, in writing, as required by California wage-and-hour laws, including by  
19 the above-described requirement of off the clock work, failure to pay all overtime, and failure to  
20 pay premium wages for unprovided or otherwise unlawful meal and rest breaks. Defendants have  
21 also made it difficult to account with precision for the unlawfully withheld wages and meal and  
22 rest period compensation owed to Plaintiff and the Class, during the liability period, because they  
23 did not implement and preserve a record-keeping method as required for non-exempt employees  
24 by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage  
25 Orders. Upon information and belief, time clock punches were not maintained or were not  
26 accurately maintained for work shifts and meal periods. Defendants also failed to accurately  
27 record and pay for all regular and overtime hours worked by Plaintiff and the Class members.

28           32. Defendants also provided Plaintiff and the Class members with wage statements

1 that failed to accurately report all hours worked and applicable hourly rates for all hours worked,  
2 including by reflecting rounded hours to the Employees' detriment and otherwise requiring off the  
3 clock work. For the same reasons as explained above, Plaintiff and the Class members were  
4 provided with unlawful wage statements that failed to reflect all hours worked by rounding and by  
5 only paying for his scheduled hours rather than his actual hours and failed to pay for all overtime  
6 hours, including at the correct overtime rate. Defendants followed this unlawful policy and  
7 practice even though both Plaintiff and Defendants were aware that Plaintiff and the Class  
8 members worked more total hours than were reflected on the wage statements including overtime  
9 hours. Plaintiff and the Employees in the Class were unable to discern from their wage statements  
10 alone the actual hours they worked in total during a pay period and the rates they were paid for  
11 those hours worked.

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

22         34. Defendants required Plaintiff and the Class members to work hours off the clock  
23 for which they were not compensated and engaged in systematic rounding to the detriment of  
24 Employees, and Defendants also failed to pay all overtime premium wages owed for work  
25 conducted on a work shift and a workday, as addressed above. Also, when Plaintiff was  
26 terminated, he was not provided with his final pay at the time of termination. Therefore, from at  
27 least three or four years prior to filing this lawsuit and continuing to the present, Defendants have  
28 also followed a uniform and consistent policy of failing to pay all wages owed to Plaintiff and

1 other similarly situated Employees at the time of their termination or within seventy-two hours of  
2 their resignation, as required by California wage-and-hour laws. Defendants also failed to pay all  
3 wages owed to those Class members at the time they were terminated or otherwise separated from  
4 employment.

5 35. Plaintiff has requested records from Defendants and they have only partially  
6 responded. Therefore, Plaintiff also asserts that Defendants have had a consistent policy of  
7 denying Plaintiff and Class members the right to inspect and receive all of their payroll records,  
8 timecards, and personnel records.

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

28 37. Additionally, from at least four years prior to the filing of this lawsuit and

1 continuing to the present, Defendants have regularly required Plaintiff and the Class members to  
2 incur necessary business expenses in the course of performing their required job duties without  
3 reimbursement. Defendants required Plaintiff and the Class members to work remotely at times  
4 during the relevant period, but did not reimburse them for their use their computers and their  
5 internet time. Plaintiff and the Class members were also compelled to use cellular phones to  
6 conduct work related business, again without reimbursement. Plaintiff and the Class members  
7 must be reimbursed for these necessary business expenses under Labor Code § 2802 and  
8 Defendants systematically failed to do so.

9 38. In light of the foregoing, Plaintiff and the Employees in the Class bring this action  
10 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4,  
11 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,  
12 1194.2 1197, 1198.5, 1199, 2802, and 2698 *et seq.*, and California Code of Regulations, Title 8,  
13 section 11000 *et seq.*

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

### 18 **CLASS ALLEGATIONS**

19 40. Plaintiff brings this class action on behalf of himself and all others similarly  
20 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the  
21 Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any  
22 time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as  
23 determined by the Court (“the Class Period”), and who have been employed as non-exempt,  
24 hourly employees by Defendants in connection with their university offices and facilities within  
25 the State of California.” Further, Plaintiff seeks to represent the Subclasses composed of and  
26 defined as follows:

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



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

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

7           d.       Subclass 4. Rest Break Subclass. All Class members who were subject to  
8 Defendants' policy and/or practice of failing to authorize and permit Employees to take  
9 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction  
10 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

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

13          f.       Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members  
14 who were subject to Defendants' policy and/or practice of deducting wages earned from their pay,  
15 including by requiring off the clock work.

16          g.       Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class  
17 members who were subject to Defendants' policy and practice of not timely paying all wages  
18 earned when they were due and payable at least twice monthly.

19          h.       Subclass 8. Termination Pay Subclass. All Class members who, within the  
20 applicable limitations period, either voluntarily or involuntarily separated from their employment  
21 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon  
22 termination.

23          i.       Subclass 9. Failure To Produce Requested Employment Records Subclass. All  
24 Class members who, within the applicable limitations period, were denied the right to inspect and  
25 receive all their payroll records, timecards, and personnel records.

26          j.       Subclass 10. Payroll Records Subclass. All Class members who were subject to  
27 Defendants' policy and/or practice of failing to keep accurate time and wage records as required  
28 by California wage-and-hour laws.

i. Subclass 11. Expense Reimbursement Subclass. All Class members who incurred necessary and reasonable expenses in connection with performing their job duties for Defendants and who were subject to a policy and/or practice under which such expenses were not reimbursed.

j. Subclass 12. 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.

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

42. 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 and pay compensation for the time worked by Plaintiff and the other members of the Class, even though Defendants enjoyed the benefit of this work, required Employees 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.

43. 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 this litigation and the proposed Class is easily ascertainable from the employment records for Plaintiff and the Class members that Defendants are required to maintain under California law.

**A. Numerosity**

44. The potential members of the Class as defined are so numerous that joinder of all the Class members is impracticable. While the precise number of Class member has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the

time period relevant to this lawsuit employed, at least 100 Employees who satisfy the Class definition within the State of California. Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all Class members.

**B. Commonality**

45. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class members. The common questions are numerous and substantial and flow from Defendants' uniform policies and/or practices of violating the California Labor Code addressed above. As such, these common questions predominate over individual questions concerning each individual Class Member's showing as to his or her eligibility for recovery or as to the amount of damages. These common questions of law and fact include:

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Employees to take requisite rest breaks or provide premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements and wage statements that omitted many of the Section 226(a) requirements.
- g. Whether Defendants violated Labor Code § 221;
- h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- i. Whether Defendants' conduct was willful;
- j. Whether Defendants violated Labor Code § 226 and § 1174 and § 1198 and the

IWC Wage Orders by failing to maintain accurate records of Class members' earned wages and work periods;

- k. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- l. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;
- m. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business expenses incurred by Employees;
- n. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not providing employees with all required sick days and COVID-19 supplemental sick leave;
- o. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- p. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- q. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

**C. Typicality**

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

**D. Adequacy of Representation**

47. Plaintiff will fairly and adequately represent and protect the interest of the Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are experienced and competent in litigating employment class actions.

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**E. Superiority of Class Action**

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

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

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

51. Defendants, as prospective and actual employers of the Employees in the Class, had a special fiduciary duty to disclose to prospective Class members the true facts surrounding Defendants' pay practices, policies and working conditions imposed upon the similarly situated Employees as well as the effect of any alleged arbitration agreements that may have been forced

1 upon them. In addition, Defendants knew they possessed special knowledge about pay practices  
2 and policies, most notably intentionally refusing to pay for all hours actually worked which should  
3 have been recorded in Defendants' pay records and the consequence of the alleged arbitration  
4 agreements and policies and practices on the Employees and Class as a whole.

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

12 **FIRST CAUSE OF ACTION**  
13 **FAILURE TO PAY MINIMUM WAGES**  
14 **(Against All Defendants)**

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

17 54. Defendants failed to pay Employees minimum wages they were owed, including  
18 by their consistent policy of failing to pay Employees for all hours worked. Employees would  
19 work hours and not receive wages, including as alleged above in connection with off the clock  
20 work and unlawful rounding and time shaving, including all the time required to remain on duty  
21 and under Defendants' control and during breaks and due to the work demands placed upon them  
22 by Defendants' management. Defendants also imposed difficult to attain job and shift scheduling  
23 requirements on Plaintiff and the Class members and required them to list or otherwise record  
24 hours worked as scheduled rather than as actually worked, which resulted in off the clock work  
25 and underpayment of all wages owed to Employees over a period of time, while benefiting  
26 Defendants. During the relevant Class Period, Defendants thus regularly failed to pay minimum  
27 wages to Plaintiff and the Class members, including by requiring systematic off the clock work.  
28 Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation,

1 applicable to the Class as a whole, as a result of implementing a uniform policy and practice that  
2 denied accurate compensation to Plaintiff and the other members of the Class as to minimum  
3 wage pay.

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

12         56. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”  
13 states: “The minimum wage for employees fixed by the commission is the minimum wage to be  
14 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The  
15 applicable minimum wage rate fixed by the commission for work during the relevant period is  
16 found in the Wage Orders.

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

23         58. As described in California Labor Code §§ 1185 and 1194.2, any action for wages  
24 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,  
25 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage  
26 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for  
27 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in  
28 the absence of a contractually agreed upon one. The underpayment of wages to Plaintiff and the

1 Class members is and has been a direct consequence of Defendants' unlawful compensation  
2 policies and practices, which applied uniformly to the Class members working at locations and  
3 work sites throughout California.

4 59. In committing the above-described violations of the California Labor Code,  
5 Defendants inaccurately recorded, or required Plaintiff and the Class members to input times that  
6 did not reflect their actual hours worked, or calculated the correct time worked and consequently  
7 underpaid the actual time worked by Plaintiff and other members of the Class, including by  
8 requiring off the clock work and rounding and refusing to pay all incurred overtime, as addressed  
9 in detail above. Defendants acted in an illegal attempt to avoid the payment of all earned wages,  
10 and other benefits in violation of the California Labor Code, the Industrial Welfare Commission  
11 requirements and other applicable laws and regulations. As a result of these violations, Defendants  
12 also failed to timely pay all wages earned in accordance with California Labor Code § 1194.

13 60. California Labor Code § 1194.2 also provides for the following remedies: "In any  
14 action under Section 1194 . . . to recover wages because of the payment of a wage less than the  
15 minimum wages fixed by an order of the commission, an employee shall be entitled to recover  
16 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

17 61. In addition to restitution for all unpaid wages, pursuant to California Labor Code §  
18 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial  
19 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to  
20 pay each employee minimum wages.

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

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

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



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

## 15 **SECOND CAUSE OF ACTION**

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

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

18 65. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in  
19 full herein.

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

26 67. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and  
27 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the  
28 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular

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

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

28 69. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of

1 regular wages owed and overtime compensation for all hours worked, as required by California  
2 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable  
3 IWC Wage Order, and is therefore unlawful.

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

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

23 72. Employees have been damaged by these violations of California Labor Code §§  
24 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under  
25 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less  
26 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions  
27 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the  
28 minimum fixed by an order of the commission” or “violates...any provision of this chapter or

1 any order or ruling of the commission.”

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

9 **THIRD CAUSE OF ACTION**

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

11 **(Against All Defendants)**

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

14 75. Employees regularly worked shifts greater than five hours and in some instances,  
15 greater than ten hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC  
16 Wage Order, an employer may not employ someone for a shift of more than five hours without  
17 providing him or her with a meal period of not less than thirty minutes or for a shift of more than  
18 ten hours without providing him or her with a second meal period of not less than thirty minutes.

19 76. Defendants failed to provide Employees with meal periods as required under the  
20 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required  
21 to work or to otherwise remain under Defendants’ control during meal periods, or Defendants  
22 provided them after Employees worked beyond the fifth hour of their shifts or Employees  
23 otherwise had them shortened and interrupted by work demands and requirements to remain under  
24 Defendants’ control during off the clock time. Furthermore, upon information and belief, on the  
25 occasions when Employees worked more than ten hours in a given shift, they did so without  
26 receiving a second uninterrupted thirty-minute meal period as required by law.

27 77. Defendants thus failed to provide Plaintiff and the Class members with meal  
28 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,

1 including by not providing them with the opportunity to take meal breaks, by providing them late  
2 or for less than thirty minutes, or by requiring them to perform work during breaks.

3 78. Moreover, Defendants failed to compensate Employees for each meal period not  
4 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and  
5 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an  
6 employee a meal period in accordance with this section, the employer shall pay the employee one  
7 hour of pay at the employee's regular rate of compensation for each workday that the meal period  
8 is not provided. Defendants failed to compensate the Employees in the Class for each meal period  
9 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11  
10 and 20 of the applicable IWC Wage Order.

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

17 **FOURTH CAUSE OF ACTION**

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

19 **(Against All Defendants)**

20 80. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in  
21 full herein.

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

25 82. Employees consistently worked consecutive four hour shifts and were generally  
26 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and  
27 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable  
28 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for

1 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest  
2 breaks of not less than ten minutes for each consecutive four hour shift. Defendants made no  
3 efforts to authorize and permit rest breaks or otherwise schedule them, and Employees were often  
4 required to work or to otherwise remain under Defendants' control during rest periods, and had  
5 breaks provided untimely as a result of the above described off the clock work. Plaintiff and the  
6 Class members were also not permitted to leave their work premises during any rest breaks they  
7 were able to take.

8 83. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage  
9 Orders provide that if an employer fails to provide an employee rest period in accordance with this  
10 section, the employer shall pay the employee one hour of pay at the employee's regular rate of  
11 compensation for each workday that the rest period is not provided.

12 84. Defendants, and each of them, have therefore intentionally and improperly denied  
13 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and  
14 paragraph 12 of the applicable IWC Wage Orders.

15 85. Defendants failed to authorize and permit Plaintiff and the Class members to take  
16 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees  
17 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed  
18 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs  
19 12 and 20 of the applicable IWC Wage Orders.

20 86. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the  
21 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one hour  
22 of wages at their effective hourly rates of pay for each day worked without the required rest  
23 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against  
24 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

25 **FIFTH CAUSE OF ACTION**

26 **VIOLATION OF LABOR CODE § 226(a)**

27 **(Against All Defendants)**

28 87. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

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

9 89. Defendants failed to provide Plaintiff and the similarly situated Employee Class  
10 members with accurate itemized wage statements in writing, as required by the Labor Code and  
11 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to  
12 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,  
13 including by failing to pay for all hours worked, failing to pay for all overtime hours worked and  
14 for providing deficient meal periods and rest breaks, all of which Defendants knew or reasonably  
15 should have known were owed to the Employees, as alleged above.

16 90. Defendants also provided Plaintiff and the Class members with wage statements  
17 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.  
18 Plaintiff and the Employees in the Class were unable to discern from their wage statements alone  
19 the actual hours they worked in total during a pay period.

20 91. Throughout the liability period, Defendants intentionally failed to furnish to  
21 Plaintiff and the Class members, upon each payment of wages, itemized statements accurately  
22 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-  
23 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net  
24 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of  
25 the employee and only the last four digits of his or her social security number or an employee  
26 identification number other than a social security number, (8) the name and address of the legal  
27 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and  
28 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor

1 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory  
2 requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class  
3 members with such timely and accurate wage and hour statements.

4 92. Plaintiff and the Class members suffered injury as a result of Defendants' knowing  
5 and intentional failure to provide them with the wage and hour statements as required by law and  
6 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the  
7 Defendants have failed to provide an accurate wage statement, failed to provide accurate and  
8 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),  
9 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the  
10 wage statement alone one or more of the following: (i) The amount of the gross wages or net  
11 wages paid to the employee during the pay period or any of the other information required to be  
12 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of  
13 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net  
14 wages paid to the employee during the pay period, (iii) The name and address of the employer  
15 and, (iv) The name of the employee and only the last four digits of his or her social security  
16 number or an employee identification number other than a social security number. For purposes  
17 of Labor Code § 226(e) "promptly and easily determine" means a reasonable person [i.e. an  
18 objective standard] would be able to readily ascertain the information without reference to other  
19 documents or information.

20 93. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers  
21 are required "to pay each employee, on the established payday for the period involved, not less  
22 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor  
23 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order  
24 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members  
25 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph  
26 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable  
27 IWC Wage Orders.

28 94. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code



1 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the  
2 Class suffered injuries, including among other things confusion over whether they received all  
3 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing  
4 them to make mathematical computations to analyze whether the wages paid in fact compensated  
5 them correctly for all hours worked.

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

12 **SIXTH CAUSE OF ACTION**  
13 **VIOLATION OF LABOR CODE § 221**  
14 **(Against All Defendants)**

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

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

22 98. Defendants unlawfully received and/or collected wages from the Employees in the  
23 Class by implementing a policy understating the hours worked by Employees and by rounding and  
24 requiring off the clock work, and as otherwise alleged above.

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

27 ///

28 ///

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

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

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

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

103. Defendants violated Labor Code § 204 by systematically refusing to timely pay wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers are required “to pay each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in

1 the payroll period, ..." Under Labor Code § 1198, "[t]he employment of any employee for longer  
2 hours than those fixed by the order or under conditions of labor prohibited by the order is  
3 unlawful." Plaintiff and the Class members may therefore pursue damages and penalties for  
4 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including  
5 penalties under paragraph 20 of the applicable IWC Wage Orders.

6 104. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to  
7 represent have been deprived of wages in amounts to be determined at trial, and they are entitled  
8 to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,  
9 pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the  
10 applicable IWC Wage Orders.

11 **EIGHTH CAUSE OF ACTION**  
12 **VIOLATION OF LABOR CODE § 203**  
13 **(Against All Defendants)**

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

16 106. Plaintiff and numerous Class members are no longer employed by Defendants; they  
17 either quit Defendants' employ or were fired therefrom.

18 107. Defendants failed to pay Plaintiff, and upon information and belief the other  
19 Employees, all wages due and certain at the time of termination or within seventy-two (72) hours  
20 of resignation, as addressed in detail above.

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

23 109. Defendants failed to pay these Class members without abatement, all wages as  
24 defined by applicable California law. Among other things, these Employees were not paid all  
25 regular and overtime wages, including by Defendants failing to pay for all hours worked or  
26 requiring off the clock work or by unlawfully under-recording time entries and rounding to the  
27 detriment of Employees, and Defendants failed to pay premium wages owed for unprovided meal  
28 periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said

1 wages within the required time was willful within the meaning of Labor Code § 203.

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

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

18 **NINTH CAUSE OF ACTION**

19 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS, LABOR CODE §§ 1174, 1174.5**

20 **(Against All Defendants)**

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

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

27 114. During the course of Plaintiff’s and Employees’ employment, Defendants  
28 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as

1 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,  
2 overtime, and premium pay as discussed above.

3 115. Defendants are also required by the California Labor Code § 1198 and the  
4 applicable Wage Order to maintain a tracking system that accurately records the times at which  
5 Employees works.

6 116. Defendants have maintained a common unlawful policy and practice of failing to  
7 accurately record meal breaks. At all times relevant hereto, Defendants had maintained an  
8 unlawful uniform policy and practice of editing the time records entered by its Employees to  
9 change the actual meal break times recorded by the employee, in order to make it appear as though  
10 Defendants' Employees took timely and compliant meal breaks.

11 117. Defendants' failure to pay wages, as alleged above, was willful in that Defendants  
12 knew wages to be due but failed to pay them.

13 118. Accordingly, Defendants are liable for civil penalties pursuant to the California  
14 Labor Code including § 1174.5, for the three years prior to the filing of this Complaint.

15 **TENTH CAUSE OF ACTION**

16 **FAILURE TO PRODUCE REQUESTED RECORDS, LABOR CODE §§ 226 and 1198**

17 **(Against All Defendants)**

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

20 120. Pursuant to California Labor Code § 226, current and former employees have the  
21 right to inspect or receive a copy of their records pertaining to their employment, upon reasonable  
22 request to their employer. Under this statute, an employer that receives a request to inspect or  
23 receive a copy of records pertaining to a current or former employee must comply with the request  
24 as soon as practicable, but no later than twenty-one (21) calendar days from the date of the  
25 request..

26 121. Pursuant to California Labor Code § 1198.5(a), every current and former employee,  
27 or his or her representative, has the right to inspect and receive a copy of the personnel records  
28 that the employer maintains relating to the employee's performance or to any grievance concerning

1 the employee. Under this statute, upon written request from a current or former employee or his or  
2 her representative, an employer must make the contents of those personnel records available for  
3 inspection or provide a copy of the personnel records to the current or former employee, or his or  
4 her representative, not later than thirty (30) calendar days from the date the employer receives the  
5 written request, subject to some limited exceptions. Failure to comply with these requests allows  
6 for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and  
7 226(f).

8 122. Plaintiff sent written requests through his counsel to Defendants for their payroll  
9 records, timecards, and personnel records. However, Plaintiff has not received all of his requested  
10 records as of the date of this Complaint

11 123. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely  
12 produce the required records requested by Plaintiff.

13 124. On information and belief, Defendants' failure to provide Plaintiff with all of his  
14 requested employment records is not an isolated incident, but was instead consistent with  
15 Defendants' policy and practice that applied to Plaintiff and Employees.

16 125. Pursuant to California Labor Code § 1198.5, Plaintiff and Employees are entitled to  
17 a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and costs.

18 126. Pursuant to California Labor Code § 226(f), Plaintiff is entitled to a penalty of  
19 seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and cost.

20 **ELEVENTH CAUSE OF ACTION**

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

22 **UNDER LABOR CODE § 2802**

23 **(Against All Defendants)**

24 127. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in  
25 full herein.

26 128. Plaintiff is informed and believes and based thereon alleges that throughout the  
27 period applicable, Defendants required Plaintiff and the Class members to pay for necessary work  
28 related expenses they incurred. Defendants required Plaintiff and the Class members to use their

1 cellular phones to conduct work related business and required them to use their own computers  
2 and internet service when working remotely. Plaintiff and the Class members must be reimbursed  
3 for these necessary business expenses under Labor Code § 2802 and Defendants systematically  
4 failed to do so.

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

9 130. Defendants' knowing and willful failure to reimburse lawful necessary work related  
10 expenses and losses to Plaintiff and the Class members resulted in damages because, among other  
11 things, Defendants did not inform employees of their right to be reimbursed for those work related  
12 expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard  
13 to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and  
14 necessary expenses was an expected and essential function of their employment with Defendants  
15 and that failure to incur those expenses would have adverse consequences on their employment.

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

22 **TWELFTH CAUSE OF ACTION**

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

24 **(Against All Defendants)**

25 132. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in  
26 full herein.

27 133. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,  
28 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of

1 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and  
2 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting  
3 the public interest within the meaning of Code of Civil Procedure § 1021.5.

4 134. Plaintiff is a “person” within the meaning of Business & Professions Code  
5 § 17204, have suffered injury, and therefore has standing to bring this cause of action for  
6 injunctive relief, restitution, and other appropriate equitable relief.

7 135. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair  
8 business practices. By the conduct alleged herein, Defendants’ practices were deceptive and  
9 fraudulent in that Defendants’ policy and practice failed to provide the required amount of  
10 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and  
11 Class members for all hours worked, due to systematic business practices as alleged herein that  
12 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare  
13 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*  
14 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California  
15 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

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

23 137. Defendants have violated statutes and public policies. Through the conduct alleged  
24 in this Complaint, Defendants have acted contrary to these public policies, have violated specific  
25 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in  
26 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,  
27 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges  
28 guaranteed to all employees under the law. Defendants’ conduct, as alleged above, constitutes



1 unfair competition in violation of the Business & Professions Code § 17200 *et seq.*

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

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

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

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

22 **THIRTEENTH CAUSE OF ACTION**

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

24 **(Against All Defendants)**

25 142. Plaintiff realleges and incorporate all preceding paragraphs, as though set  
26 forth in full herein.

27 143. Plaintiff and the Employees in the Class are also aggrieved employees as  
28 defined under Labor Code § 2699(c) in that they suffered the violations alleged in this

1 Complaint and either were or are employed by Defendants (“Aggrieved Employees”)  
2 during the relevant time period.

3 144. In failing to pay Aggrieved Employees minimum wages and overtime, not  
4 providing proper meal and rest periods, failing to provide accurate itemized wage  
5 statements, and failing to pay Employees wages upon termination or timely upon  
6 resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees  
7 wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed  
8 to maintain records showing accurate hours worked daily and the wages paid to Aggrieved  
9 Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC  
10 Wage Orders.

11 145. As such, Employees seek wages and penalties under Labor Code §§ 2698 and  
12 2699 for Defendants’ violation of Labor Code provisions included under Labor Code §  
13 2699.5, including the penalty provisions, without limitation, based, inter alia, on the  
14 following California Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7,  
15 432.5, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199,  
16 2802 and 2698 *et seq.*

17 146. More specifically, after complying with the notice procedures of Labor Code  
18 § 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney  
19 General and the other similarly Aggrieved Employees, a PAGA claim for violations of the  
20 above addressed underlying claims and seeking penalties as specified by the applicable  
21 corresponding provisions, including as follows:

22 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all  
23 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime  
24 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and  
25 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking  
26 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,  
27 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys’ fees and costs pursuant  
28 to Labor Code § 2699(g)(1);

1 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved  
2 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to  
3 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under  
4 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC  
5 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under  
6 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,  
7 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs  
8 pursuant to Labor Code § 2699(g)(1);

9 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide  
10 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to  
11 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,  
12 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking  
13 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),  
14 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,  
15 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by  
16 providing inaccurate wage statements and failing to maintain records as required under Labor  
17 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor  
18 Code §226.3, which in addition to other penalties provided by law, subjects Defendants to "a  
19 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial  
20 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent  
21 citation, ...";

22 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at  
23 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,  
24 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,  
25 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20  
26 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code  
27 § 2699(g)(1);

28 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For

Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

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

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

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

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

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

(c) The civil penalties provided for in this section are in addition to any other civil or

1 criminal penalty provided by law.

2 148. Plaintiff has exhausted her administrative remedies by submitting a certified  
3 letter to the LWDA and Defendants on July 14, 2023 (LWDA Case No. LWDA-CM-  
4 968289-23) addressing in detail the specific provisions of the Labor Code Defendants have  
5 violated and addressing the facts and legal theories to support the alleged violations and  
6 requested penalties. The LWDA has not provided notice of its intent to investigate the  
7 alleged violations within 65 calendar days of the postmark date of the letter, and Plaintiff  
8 adds this claim seeking penalties under the PAGA for the violations addressed herein and  
9 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 Employees and unpaid overtime compensation from at least four (4) years prior to  
15 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 Employees  
21 for each missed or deficient meal period where no premium pay was paid therefor from four (4)  
22 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 Employees  
24 for each day requisite rest breaks were not provided or were deficiently provided where no  
25 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may  
26 be proven;
- 27 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 28 8. For restitution and/or damages and penalties for Defendants' failure to pay all

1 wages due twice monthly under Labor Code § 204, 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 § 221, as may be proven;

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

6 11. For liquidated damages pursuant to California Labor Code 1194.2(a) for failure to  
7 pay minimum wage;

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

10 13. For liquidated damages pursuant to California Labor Code 1194.2(a) for failure to  
11 pay minimum wage;

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

13 15. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;

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

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

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

20 19. For penalties under Labor Code § 558, as may be proven;

21 20. For other wages and penalties under the Labor Code as may be proven;

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

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

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

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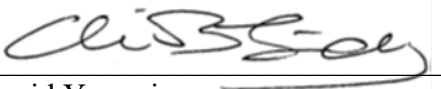
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24. For an award of attorneys' fees; and
25. For such other and further relief as this Court may deem proper and just.

DATED: September 18, 2023

D.LAW, INC.

By   
David Yeremian  
Alvin B. Lindsay  
Attorneys for Plaintiff RAUL B. IBARRA,  
on behalf of himself and others similarly  
situated

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DATED: September 18, 2023

By

David Yeremian  
Alvin B. Lindsay  
Attorneys for Plaintiff RAUL B. IBARRA,  
on behalf of himself and 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.

Sofija Anderson  
[svanderson@littler.com](mailto:svanderson@littler.com)  
 Angela J. Rafoth  
[arafoth@littler.com](mailto:arafoth@littler.com)  
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 111 East Kilbourn Avenue Suite 1000  
 Milwaukee, WI 53202

**[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.

**[ ] (BY ELECTRONIC SERVICE)** I caused the document(s) described herein to be served on the person(s) noted above by electronic mail to their E-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. [Pursuant to Civil Code Procedure 1010.6]

Executed on September 18, 2023, at Glendale, California.

Sasha Zambrano