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on behalf of themselves and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

VIVIAN SOTO and DAMIAN SOTO,
individuals on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

TOSCA SERVICES, LLC, a Delaware
Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Case No.:

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a);
6. Violation of Labor Code § 203;
7. Violation of Labor Code § 204;
8. Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5;
9. Failure to Pay Reporting Time Pay;
10. Illegal Wage Deductions, Labor Code § 221;
11. Failure to Reimburse Necessary Business Expenses § 2802; and
12. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiffs VIVIAN SOTO and DAMIAN SOTO (“Plaintiffs”) brings this action on behalf of himself and the Class Members who are defined as “all current and former employees within the State of California who, at any time from four (4) years prior to the filing of this lawsuit, are or were employed as non-exempt hourly employees by Defendants TOSCA SERVICES, LLC, a Delaware Limited Liability Company; and DOES 1 through 50” (all defendants being collectively referred to herein as “Defendants”).

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

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

THE PARTIES

A. The Plaintiffs

4. Plaintiffs VIVIAN SOTO and DAMIAN SOTO reside in California, during the time period relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee within the State of California.

B. The Defendants

5. Defendant TOSCA SERVICES, LLC is a Delaware limited liability company with its principal offices in Atlanta, Georgia and is registered with the California Secretary of State. Defendant TOSCA SERVICES, LLC has been the employer listed on the wage statements and employment records issued to Plaintiffs during the relevant time period that Plaintiffs were employed with Defendants. TOSCA SERVICES, LLC employs Plaintiffs and the Class Members in California, including at Defendants’ offices and facilities in Riverside, California, and throughout California, and conducts business throughout California.

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 Plaintiffs, who therefore sue these Defendants by such fictitious names under Code of
3 Civil Procedure § 474. Plaintiffs are informed and believe and thereon allege 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. Plaintiffs 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. Plaintiffs are informed and believe and thereon allege 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 Class Members. Defendants, and each of them,
13 exercised control over the wages, hours or working conditions of Class Members, or suffered or
14 permitted Class Members to work, or engaged, thereby creating a common law employment
15 relationship, with Class Members. Therefore, Defendants, and each of them, employed or jointly
16 employed Class Members.

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

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

24 **JURISDICTION AND VENUE**

25 10. This Court has jurisdiction over this Action pursuant to California Code of Civil
26 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
27 as a Class Action on behalf of similarly situated Class Members of Defendants pursuant to
28 California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial

1 district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief,
2 the obligations and liabilities giving rise to this lawsuit occurred in part in Riverside County.
3 Defendants maintain and operate facilities in Riverside County and employs Plaintiffs and other
4 Class Members in Riverside County, while doing business throughout California.

5 **FACTUAL BACKGROUND**

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

18 12. During the course of Class Members’ employment with Defendants, they were not
19 paid all wages they were owed, including for all work performed resulting in off the clock work.
20 Defendants required Class Members to perform pre-shift and post-shift off the clock work. For
21 instance, Defendants required Class Members to wait in line to be able to access time clocks and
22 clock in, and Class Members were not paid for this time. Defendants also required Class Members
23 to don protective equipment prior to clocking in, and to doff protective equipment after clocking
24 out, and Class Members were not paid for this time. Additionally, if Class Members had work left
25 to complete at the end of their scheduled shifts, they were instructed to clock out and complete the
26 work, and were not paid for this time. Furthermore, Defendants frequently contacted Class
27 Members on their personal cell phones with work demands outside of scheduled work hours, and
28 Class Members were not compensated for this time. Defendant also required Class Members to

1 wait on-call to determine whether they were needed to report for work that day, and Class
2 Members were not paid for this time.

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

14 14. Defendants also failed to pay Class Members all wages due and owing because
15 Defendants failed to incorporate non-discretionary, performance-based cash bonuses and/or shift
16 differentials into the regular rate of pay. Contrary to the requirements of the Labor Code and IWC
17 Wage Orders under California law, Defendants did not incorporate these non-discretionary
18 bonuses and/or shift differentials paid to the Class Members into the regular rate of pay
19 Defendants used to calculate and pay for overtime pay, sick pay, and meal and rest break
20 premiums.

21 15. Moreover, Defendant required Plaintiffs and the Class Members to, on occasion,
22 report for a scheduled work day to be told whether work was available for them or not, and when
23 there was no work, Plaintiffs and the Class members would be sent home after waiting for hours.
24 On such days when Defendant required Plaintiffs and the Class Members to report to work only to
25 be sent home because work was not available, they were not paid required reporting time wages
26 for the hours they waited without receiving their regular hourly rate of pay for them.

27 16. By implementing policies, programs, practices, procedures and protocols which
28 resulted in off the clock work, unlawful rounding, and the failure to incorporate non-discretionary

1 bonuses and/or shift differentials into the regular rate of pay, Defendants' willful actions resulted
2 in the systematic underpayment of wages to Class Members, including underpayment of overtime
3 pay to Class Members over the relevant time period. For example, the above described off the
4 clock work addressed above caused Plaintiffs to begin receiving overtime pay later than they
5 should have.

6 17. As a result of the above described requirements to work off the clock, unlawful
7 rounding, the failure to incorporate non-discretionary bonuses and/or shift differentials into the
8 regular rate of pay, and the other wage violations they endured at Defendants' hands, Class
9 Members were not properly paid all wages earned and all wages owed to them by Defendants,
10 including when working more than eight (8) hours in any given day and/or more than forty (40)
11 hours in any given week.

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

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

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

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

8 21. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
9 meal periods and all the legally required paid, off-duty rest periods to Class Members, as required
10 by the applicable Wage Order and Labor Code. Class Members were required to perform work as
11 ordered by Defendants for more than five (5) hours during a shift but were often required to do so
12 without receiving a lawful and timely meal break. In addition to untimely meal periods,
13 Defendants also required Class Members to respond to work demands. Defendants placed their
14 needs over Class Members lawful meal and rest breaks and this resulted in Class Members often
15 having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened
16 ones, because the demands of the job would not avail them the opportunity to take a lawfully
17 uninterrupted and off duty meal and/or rest break.

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

25 23. Therefore, for at least four years prior to the filing of this action and through to the
26 present, Defendants have regularly required Class Members to work shifts in excess of five (5)
27 hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes,
28 and shifts in excess of (10) hours without providing them with second meal periods of not less

1 than thirty minutes; nor did Defendants pay Class Members “premium pay,” i.e. one hour of
2 wages at each Class Member’s effective hourly rate of pay, for each meal period that Defendants
3 failed to provide or deficiently provided. To the extent Class Members were permitted to take
4 meal periods, they were not permitted to leave the premises, and were required to carry walkie-
5 talkies and respond to work demands.

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

- 7 (a) Class Members were not provided full thirty-minute duty free meal periods
8 for work days in excess of five (5) hours and were not compensated one (1)
9 hour’s wages in lieu thereof, all in violation of, among others, Labor Code
10 §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage
11 Order(s);
- 12 (b) Class Members were not provided second full thirty-minute duty free meal
13 periods for work days in excess of ten (10) hours;
- 14 (c) Class Members were required to work through at least part of their daily
15 meal period(s);
- 16 (d) Meal periods were provided after five (5) hours of continuous work during
17 a shift; and
- 18 (e) Class Members were restricted in their ability to take a full thirty-minute
19 meal period.

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

1 permitted to take rest breaks, they were not permitted to leave the premises, and were required to
2 carry walkie-talkies and respond to work demands.

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

- 4 (a) Class Members were required to work without being provided a minimum
5 ten (10) minute rest period for every four (4) hours or major fraction
6 thereof worked and were not compensated one (1) hour of pay at their
7 regular rate of compensation for each workday that a rest period was not
8 provided;
- 9 (b) Class Members were not authorized and permitted to take timely rest
10 periods for every four hours worked, or major fraction thereof; and
- 11 (c) Class Members were required to remain on-duty during rest periods or
12 otherwise had their rest periods interrupted by work demands.

13 27. Defendants also consistently failed to issue accurate itemized wage statements as
14 required by Labor Code § 226(a). Specifically, the wage statements given to Class Members did
15 not correctly list the total number of hours worked in violation of Labor Code § 226(a)(2), did not
16 list all applicable hourly rates in violation of Labor Code § 226(a)(9), and failed to accurately
17 account for unpaid wages and overtime because their actual hours worked were under-reported
18 due to off the clock work and unlawful rounding. Moreover, the wage statements given to Class
19 Members failed to incorporate non-discretionary bonuses and/or shift differentials into the regular
20 rate of pay used to calculate and pay overtime compensation. Additionally, the wage statements
21 given to Class Members failed to accurately account for premium pay for deficiently provided
22 meal periods and rest breaks.

23 28. From at least four (4) years prior to filing this lawsuit and continuing to the present,
24 Defendants have thus also had a consistent policy of failing to pay all wages owed to Class
25 Members at the time of their termination of within seventy-two (72) hours of their resignation, as
26 required by California wage-and-hour laws. Specifically, Plaintiffs and Class Members were not
27 paid all regular and overtime wages because Defendants failed to pay for all hours worked by
28 requiring off the clock work, unlawfully rounding to the detriment of Class Members, and failing

1 to incorporate non-discretionary bonuses and/or shift differentials into the regular rate of pay used
2 to calculate and pay for overtime pay, sick pay, and meal and rest break premiums. Additionally,
3 Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as
4 further detailed in this Complaint. Defendants' failure to pay said wages within the required time
5 was willful within the meaning of Labor Code § 203.

6 29. Additionally, from at least four (4) years prior to the filing of this lawsuit and
7 continuing to the present, Defendants have regularly required Class Members to incur business
8 expenses in the course of performing their required job duties for Defendants including for cell
9 phone expenses and protective gear including boots, gloves, and glasses. Upon information and
10 belief, Class Members incurred similar costs. These expenses incurred by Class Members were
11 necessary and required of them in performing their assigned job duties, but Defendants failed to
12 reimburse Class Members for all such necessary expenditures, thus entitling them to
13 reimbursement according to proof as required under Labor Code § 2802 and the applicable
14 provisions of the IWC Wage Orders.

15 30. In light of the foregoing, Plaintiffs and Class Members bring this action pursuant
16 to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1,
17 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802 and California Code of
18 Regulations, Title 8, section 11000 *et seq.*

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

23 **CLASS ALLEGATIONS**

24 32. Plaintiffs seek to represent the Subclasses composed of and defined as follows:

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

27 b. Subclass 2. Wages and Overtime Subclass. All Class Members who were not
28 compensated for all hours worked for Defendants at the required rates of pay, including for all

1 hours worked in excess of eight in a day and/or forty in a week.

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

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

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

12 f. Subclass 6. Termination Pay Subclass. All Class Members who, within the
13 applicable limitations period, either voluntarily or involuntarily separated from their employment
14 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
15 termination.

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

22 i. Subclass 9. Reporting Time Pay Subclass. All Class Members who, within the
23 applicable limitations period, were not paid reporting time pay.

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

27 k. Subclass 11. Unlawful Deduction Subclass. All Class Members who suffered
28 unlawful wage deductions at the hands of Defendants.

1 1. Subclass 12. UCL Subclass. All Class Members who are owed restitution as a
2 result of Defendants' business acts and practices, to the extent such acts and practices are found to
3 be unlawful, deceptive, and/or unfair.

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

8 34. Defendants, as a matter of company policy, practice and procedure, and in violation
9 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,
10 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
11 in a practice whereby Defendants failed to correctly calculate compensation for the time worked
12 by Class Members, even though Defendants enjoyed the benefit of this work, required Class
13 Members to perform this work and permitted or suffered to permit this work. Defendants have
14 uniformly denied these Class Members wages to which these employees are entitled and failed to
15 provide meal periods or authorize and permit rest periods, in order to unfairly cheat the
16 competition and unlawfully profit.

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

20 **A. Numerosity**

21 36. The potential members of the class as defined are so numerous that joinder of all
22 the member of the class is impracticable. While the precise number of class member has not been
23 determined at this time, Plaintiffs are informed and believe that Defendants employ or, during the
24 time period relevant to this lawsuit, hundreds of employees who satisfy the Class definition within
25 the State of California.

26 37. Accounting for employee turnover during the relevant time period increases this
27 number substantially. Plaintiffs allege that Defendants' employment records will provide
28 information as to the number and location of all Class Members.

B. Commonality

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

- a. Whether Defendants failed to pay Class Members minimum wages;
- b. Whether Defendants failed to pay Class Members wages for all hours worked;
- c. Whether Defendants failed to pay Class Members 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 Class Members 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 Class Members to take requisite rest breaks or provide premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code § 226(a) by providing Class Members with inaccurate wage statements;
- g. 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;
- h. Whether Defendants' conduct was willful;
- i. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of Class Members' earned wages and work periods;
- j. Whether Defendants violated Labor Code § 1194 by failing to compensate all Class Members during the relevant time period for all hours worked, whether regular or overtime;
- k. Whether Defendants violated Labor Code § 204 by failing to timely pay wages;
- l. Whether Defendants failed to pay reporting time pay;
- m. Whether Defendants unlawfully deducted wages from Class Members;

- n. Whether Defendants violated Labor Code § 2802 by failing to reimburse all necessary business expenses Defendants required them to incur in performing their job duties;
- o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- p. Whether Class Members are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

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

D. Adequacy of Representation

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

///

E. Superiority of Class Action

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

42. 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

1 Members to individually redress the wrongs they have suffered. Moreover, in the event
2 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
3 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
4 managing this case as a class action, and proceeding on a class-wide basis will permit Class
5 Members to vindicate their rights for violations they endured which they would otherwise be
6 foreclosed from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to
7 them.

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

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

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

1 ///

2 **FIRST CAUSE OF ACTION**
3 **FAILURE TO PAY MINIMUM WAGES**
4 **(Against All Defendants)**

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

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

22 48. In California, employees must be paid at least the then applicable state minimum
23 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
24 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
25 timely pay its employees for all hours worked. Defendants failed to do so.

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

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

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

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

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

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

27 55. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
28 1197.1, Class Members are entitled to recover a penalty of \$100.00 for the initial failure to timely

1 pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each
2 employee minimum wages.

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

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

8 58. Wherefore, Class Members are entitled to recover the unpaid minimum wages
9 (including double minimum wages), liquidated damages in an amount equal to the minimum
10 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
11 to California Labor Code § 1194(a). Plaintiffs and the other members of the Class further request
12 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
13 assessment of any statutory penalties against Defendants, in a sum as provided by the California
14 Labor Code, including § 558, and/or other applicable statutes.

15 **SECOND CAUSE OF ACTION**

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

17 **(Against All Defendants)**

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

20 60. 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 61. By their conduct, as set forth herein, Defendants violated California Labor Code §
27 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Class
28 Members: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8)

1 hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours
2 worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for
3 hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of
4 eight (8) hours on any seventh day of work in a workweek.

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

21 63. Defendants' failure to pay Class Members the unpaid balance of regular wages
22 owed and overtime compensation, as required by California law, violates the provisions of Labor
23 Code §§ 510 and 1198, and is therefore unlawful.

24 64. Additionally, Labor Code § 558(a) provides "any employer or other person acting
25 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
26 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
27 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
28 pay period for which the employee was underpaid in addition to an amount sufficient to recover

1 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
2 underpaid employee for each pay period for which the employee was underpaid in addition to an
3 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
4 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in
5 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
6 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
7 Wage Orders. Accordingly, Plaintiffs and the Class Members seek the remedies set forth in Labor
8 Code § 558.

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

16 66. Class Members have been damaged by these violations of California Labor Code
17 §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

18 67. Consequently, pursuant to the California Labor Code, including Labor Code §§
19 204, 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B),
20 Defendants are liable to Class Members for the full amount of all their unpaid wages and overtime
21 compensation, with interest, plus their reasonable attorneys’ fees and costs, as well as the
22 assessment of any statutory penalties against Defendants, and each of them, and any additional
23 sums as provided by the Labor Code and/or other statutes.

24 **THIRD CAUSE OF ACTION**

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

26 **(Against All Defendants)**

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

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

6 70. Defendants failed to provide Class Members with meal periods as required under
7 the Labor Code. Defendants placed their needs over Class Members lawful meal breaks and this
8 resulted in Class Members consistently having to work through their scheduled meal breaks
9 because the demands of the job would not avail them the opportunity to take a lawfully
10 uninterrupted and off-duty meal break. Furthermore, upon information and belief, on the occasions
11 when Class Members worked more than ten (10) hours in a given shift, they did so without
12 receiving a second uninterrupted thirty (30) minute meal period as required by law. To the extent
13 Class Members were permitted to take meal periods, they were not permitted to leave the
14 premises, and were required to carry walkie-talkies and respond to work demands.

15 71. Defendants thus failed to provide Class Members with meal periods as required by
16 the Labor Code, including by not providing them with the opportunity to take meal breaks, by
17 providing them late or for less than thirty (30) minutes, or by requiring them to perform work
18 during breaks.

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

26 73. Therefore, pursuant to Labor Code § 226.7 and the applicable IWC Wage Order,
27 paragraph 11, Class Members are entitled to damages in an amount equal to one (1) hour of wages
28 at their effective hourly rates of pay for each meal period not provided or deficiently provided, a

sum to be proven at trial, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and other statutes.

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FOURTH CAUSE OF ACTION

REST-BREAK LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

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

76. Class Members consistently worked consecutive four (4) hour shifts and were generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC Wage Order, Class Members were entitled to paid rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift, and Defendants failed to provide Class Members with timely rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. To the extent Class Members were permitted to take rest breaks, they were not permitted to leave the premises, and were required to carry walkie-talkies and respond to work demands. Defendants placed their needs over Class Members lawful rest breaks and this resulted in Class Members consistently having to work through their scheduled rest breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off-duty rest break. Thus, Class Members were consistently denied of their rest breaks.

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

78. Defendants, and each of them, have therefore intentionally and improperly denied

rest periods to Class Members in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of the applicable IWC Wage Orders.

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

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

FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

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

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

83. Defendants failed to provide Class Members with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Class Members did not correctly list the total number of hours worked in violation of Labor Code § 226(a)(2), did not list all applicable hourly rates in violation of Labor Code § 226(a)(9), and failed to accurately account for unpaid wages and overtime because their actual hours worked

1 were under-reported due to off the clock work and unlawful rounding. Moreover, the wage
2 statements given to Class Members failed to incorporate non-discretionary bonuses and/or shift
3 differentials into the regular rate of pay used to calculate and pay overtime compensation.
4 Additionally, the wage statements given to Class Members failed to accurately account for
5 premium pay for deficiently provided meal periods and rest breaks.

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

17 85. Class Members suffered injury as a result of Defendants' knowing and intentional
18 failure to provide them with the accurate wage and hour statements as required by law and are
19 presumed to have suffered injury and be entitled to penalties under Labor Code § 226(e), as the
20 Defendants have failed to provide wage statements with accurate and complete information as
21 required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and Class
22 Members cannot promptly and easily determine from the wage statement alone one or more of the
23 following: (i) The amount of the gross wages or net wages paid to the employee during the pay
24 period or any of the other information required to be provided on the itemized wage statement
25 pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the
26 employer made from gross wages to determine the net wages paid to the employee during the pay
27 period, (iii) The name and address of the employer and, (iv) The name of the employee and only
28 the last four digits of his or her social security number or an employee identification number other

1 than a social security number. For purposes of Labor Code § 226(e) “promptly and easily
2 determine” means a reasonable person [i.e. an objective standard] would be able to readily
3 ascertain the information without reference to other documents or information.

4 86. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
5 § 226(a), Class Members suffered injuries, including among other things confusion over whether
6 they received all wages owed them, the difficulty and expense involved in reconstructing pay
7 records, and forcing them to make mathematical computations to analyze whether the wages paid
8 in fact compensated them correctly for all hours worked.

9 87. Pursuant to Labor Code §§ 226(a) and 226(e) and 1174, and the applicable IWC
10 Wage Order, paragraph 7(B), Class Members are entitled to recover the greater of all actual
11 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
12 hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate
13 penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and
14 reasonable attorneys’ fees.

15 **SIXTH CAUSE OF ACTION**
16 **VIOLATION OF LABOR CODE § 203**
17 **(Against All Defendants)**

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

20 89. Numerous Class Members are no longer employed by Defendants; they either quit
21 Defendants’ employ or were fired therefrom.

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

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

26 92. Defendants failed to pay Class Members without abatement, all wages as defined
27 by applicable California law. Specifically, Plaintiffs and Class Members were not paid all regular
28 and overtime wages because Defendants failed to pay for all hours worked by requiring off the

1 clock work, unlawfully rounding, and failing to incorporate non-discretionary bonuses and/or shift
2 differentials into the regular rate of pay used to calculate and pay for overtime pay, sick pay, and
3 meal and rest break premiums. Additionally, Defendants failed to pay premium wages owed for
4 unprovided meal periods and rest periods, as further detailed in this Complaint. Defendants'
5 failure to pay said wages within the required time was willful within the meaning of Labor Code §
6 203.

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

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

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

15 95. Labor Code § 204 instructs that: "All wages, ...earned by any person in any
16 employment are due and payable twice during each calendar month, on days designated in
17 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
18 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
19 during which the labor was performed, and labor performed between the 16th and the last day,
20 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
21 month." Additionally, the requirements of this section shall be deemed satisfied by the payment of
22 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
23 calendar days following the close of the payroll period." As detailed above, Defendants
24 maintained a consistently applied policy and practice of not paying all wages earned between the
25 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
26 between the 16th and the last day of the month between the 1st and 10th day of the following month.
27 Defendants similarly failed to pay all wages earned by not more than seven calendar days
28 following the close of the payroll period. These failures arose from Defendants' failure to pay for

1 all hours worked.

2 96. All wages due and owing to Plaintiffs and the Class Members, including as
3 required under Labor Code § 510, were therefore not timely paid by Defendants, as addressed in
4 detail above. Additionally, wages required by Labor Code § 1194 and other sections became due
5 and payable to each Class Member in each pay period that he or she was not provided with a meal
6 period or rest period or paid straight or overtime wages or commissions to which he or she was
7 entitled.

8 97. Defendants thus violated Labor Code § 204 by systematically refusing to pa*y
9 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
10 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
11 payday for the period involved, not less than the applicable minimum wage for all hours worked in
12 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
13 hours than those fixed by the order or under conditions of labor prohibited by the order is
14 unlawful.” Plaintiffs and the Class Members may therefore pursue damages and penalties for
15 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
16 penalties under paragraph 20 of the applicable IWC Wage Orders.

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

22 **EIGHTH CAUSE OF ACTION**

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

24 **AND 1174.5**

25 **(Against All Defendants)**

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

28 100. California Labor Code § 1174 requires that all employers shall keep accurate time

1 and wage records for all employees. California Labor Code § 1174.5 further requires that any
2 employee suffering injury due to a willful violation of the aforementioned obligations may seek
3 damages, including civil penalties, from the employer.

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

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

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11 **NINTH CAUSE OF ACTION**
12 **FAILURE TO PAY REPORTING TIME PAY**
13 **(Against all Defendants)**

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

16 104. Section 5(A) of the applicable Wage Order(s), requires that for "[E]ach workday an
17 employee is required to report for work and does report, but is not put to work or is furnished less
18 than half said employee's usual or scheduled day's work, the employee shall be paid for half the
19 usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4)
20 hours, at the employee's regular rate of pay, which shall not be less than the minimum wage."

21 105. As addressed in detail above, Defendants followed a uniform policy of failing to
22 pay reporting time pay on in accordance with the applicable IWC Wage Order requirements. For
23 example, Defendant required Plaintiffs and the Class members to, on occasion, report for a
24 scheduled work day to be told whether work was available for them or not, and when there was no
25 work, Plaintiffs and the Class members would be sent home after waiting for hours. On such days
26 when Defendant required Plaintiffs and the Class Members to report to work only to be sent home
27 because work was not available, they were not paid required reporting time wages for the hours
28 they waited without receiving their regular hourly rate of pay for them.

106. Plaintiffs bring this claim for failure to pay reporting time pay as required by Section 5 of the applicable IWC Wage Orders pursuant to California Labor Code §1198, which instructs that: “the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

107. Reporting time pay constitutes wages that remain unpaid to Plaintiffs and the Class members, despite the fact that they were required by Defendants to report for work and were under Defendants' control during these times and were unable to use their time for their own purposes. The failure to pay for reporting time pay is a violation of the California wage orders and is a failure to pay all wages owed, which is a violation of Labor Code §1198.

108. Under Section 20(A) of the applicable IWC Wage Orders, Plaintiffs and the Class members are entitled to recover civil penalties, in addition to other penalties, for each underpaid Employee for violation of Section 5 of the IWC Wage Orders in the amount of \$50 for the initial violation and \$100 for subsequent violations during each relevant pay period when Defendants failed to pay reporting time pay. These reporting time pay violations also give rise to violations of Labor Code §§ 203, 226, and under the PAGA.

109. Accordingly, Plaintiffs seek to recover unpaid reporting time pay which Defendants failed to pay Plaintiffs and the Class members pursuant to Sections 5(A) and 20(A) of the applicable IWC Wage Orders and civil penalties and attorneys' fees and costs as may be authorized.

TENTH CAUSE OF ACTION
ILLEGAL WAGE DEDUCTIONS
(Against All Defendants)

110. Plaintiffs incorporate by reference and re-allege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

111. Labor Code § 221 states “It shall be unlawful for any employer to collect or receive

1 from an employee any part of wages theretofore paid by said employer to said employee.”

2 112. As a matter of Defendants’ established company policy, Defendants willfully and
3 intentionally made deductions from the wages of the members of the Wage Deductions Class
4 during the appropriate time period, including but not limited to unauthorized deductions for
5 retirement plan contributions.

6 113. Defendants’ pattern, practice and uniform administration of corporate policy
7 regarding said illegal wage deductions is unlawful.

8 114. As a proximate result of Defendants’ improper wage deductions, the members of
9 the Wage Deductions Class have been damaged in an amount according to proof at the time of
10 trial.

11 115. The members of the Wage Deductions Class seek reimbursement of such illegal
12 wage deductions.

13 116. The members of the Wage Deductions Class are entitled to recover from
14 Defendants the full amount of all illegal wage deductions, plus penalties, interest, reasonable
15 attorneys’ fees and costs of suit.

16 **ELEVENTH CAUSE OF ACTION**
17 **REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802**
18 **(Against All Defendants)**

19 117. Plaintiffs re-allege and incorporate all preceding paragraphs as though set forth in
20 full herein.

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

24 119. Defendants have regularly required Class Members to incur business expenses in the
25 course of performing their required job duties for Defendants including for cell phone expenses and
26 protective gear including boots, gloves, and glasses. These expenses incurred by Class Members
27 were necessary and required of them in performing their assigned job duties, but Defendants failed
28 to reimburse Class Members for all such necessary expenditures. Class Members were not

1 reimbursed for those lawful and necessary work related expenses or losses incurred in direct
2 discharge of their job duties during employment with Defendants and at the direction of the
3 Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

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

7 **TWELFTH CAUSE OF ACTION**

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

9 **(Against All Defendants)**

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

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

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

20 124. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
21 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
22 fraudulent in that Defendants' policy and practice failed to provide the required amount of
23 compensation for missed meal and rest breaks, and failed to adequately compensate Class
24 Members for all hours worked, due to systematic business practices as alleged herein that cannot
25 be justified, pursuant to the applicable California Labor Code and Industrial Welfare Commission
26 requirements in violation of California Business and Professions Code §§ 17200, *et seq.*, and for
27 which this Court should issue injunctive and equitable relief, pursuant to California Business &
28 Professions Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Class Members and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Class Members for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Class Members for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
7. For penalties pursuant to Labor Code § 226(e) for Class Members, as may be proven;
8. For penalties pursuant to Labor Code § 203 for all Class Members who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

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

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

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

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

10 13. For reimbursement of all illegal wage deductions;

11 14. For penalties under Labor Code § 225.5;

12 15. For interest as authorized by Labor Code § 218.6 and Civil Code §§ 3287(b);

13 16. For other wages and penalties under the Labor Code as may be proven;

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

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

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

17 20. For an award of attorneys' fees; and

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

19 DATED: March 6, 2026

D.LAW, INC.

21 By: 
22 Natalie Haritoonian
23 Jonas Agle
24 Attorneys for Plaintiffs VIVIAN SOTO and
25 DAMIAN SOTO, and all others similarly
26 situated
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DATED: March 6, 2026

By: Natalie Haritoonian
Jonas Agle
Attorneys for Plaintiffs VIVIAN SOTO and
DAMIAN SOTO, and all others similarly
situated