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on behalf of himself and others similarly situated
6

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

9 MATEO JOHNSTON, an individual on
behalf of himself and others similarly
10 situated,

11 Plaintiff,

12 vs.

13 SEPHORA USA, INC., a Michigan
corporation; and DOES 1 through 50,
14 inclusive,

15 Defendants.
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23
24

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 Reimburse Necessary Business Expenses § 2802;
10. Violation of Labor Code § 246;
11. Failure to Pay Vested Vacation Pay;
12. Violation of Labor Code § 212; and
13. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff MATEO JOHNSTON (“Plaintiff”) 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 SEPHORA USA, INC., a Michigan corporation; and DOES 1 through 50” (all defendants being collectively referred to herein as “Defendants”).

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

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

THE PARTIES

A. The Plaintiff

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

B. The Defendants

5. Defendant SEPHORA USA, INC., is a Michigan corporation with its principal offices in San Francisco, California and is registered with the California Secretary of State. Defendant SEPHORA USA, INC. has been the employer listed on the wage statements and employment records issued to Plaintiff during the relevant time period that Plaintiff was employed with Defendants. Defendant SEPHORA USA, INC., employs Plaintiff and the Class Members in California, including at Defendants’ offices and facilities in San Francisco, 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 Plaintiff, who therefore sue 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 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 San Francisco County.
3 Defendants maintain and operate facilities in San Francisco County and employs Plaintiff and
4 other Class Members in San Francisco 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. Plaintiff also contends that
9 Defendants failed to pay Class Members all wages due and owing, including by requiring off the
10 clock work, failing to incorporate non-discretionary bonuses into the regular rate of pay used to
11 calculate overtime and double time, failing to provide meal and rest breaks, failing to provide sick
12 days, failing to pay out vacation days, failing to timely pay wages including final wages, failing to
13 maintain accurate records, failing to reimburse necessary business expenses, failing to pay for time
14 spent “on-call,” and failing to provide wages due in cash on demand, all in violation of various
15 provisions of the California Labor Code and applicable Wage Orders.

16 12. During the course of Class Members’ employment with Defendants, they were not
17 paid all wages they were owed, including for all work performed resulting in off the clock work.
18 Defendants required Class Members to perform pre-shift and post-shift off the clock work. For
19 instance, at the beginning and end of each shift, Class Members were required to wait in line to be
20 able to access a time clock and clock in. Moreover, Class Members were required to come in early
21 to help set up new displays and help stock the store, and were not paid for this time. Additionally,
22 after clocking out at the end of a shift, Class Members were required to clean the store and finish
23 daily tasks, and were not paid for this time. Class Members were also required to work on
24 weekends to prepare new store displays and print out price labels for price changes. Additionally,
25 Defendants would contact Class Members on their personal cell phones outside of scheduled work
26 hours, and Class Members were not paid for this time. Moreover, Class Members were not paid
27 for time spent driving between job sites resulting in further off the clock. Additionally, Class
28 Members were not paid for time spent “on-call.”

1 13. Defendant also failed to pay Class Members all wages due and owing because
2 Defendant failed to incorporate non-discretionary bonuses into the regular rate of pay used to
3 calculate and pay for overtime and double time pay. Contrary to the requirements of the Labor
4 Code and IWC Wage Orders under California law, Defendants did not use the regular rate of pay
5 Defendants to calculate and pay for overtime pay, double time pay, sick pay, and meal and rest
6 break premiums.

7 14. By implementing policies, programs, practices, procedures and protocols which
8 resulted in off the clock work and the failure to incorporate non-discretionary bonuses into the
9 regular rate of pay used to calculate and pay for overtime and double time, Defendants' willful
10 actions resulted in the systematic underpayment of wages to Class Members, including
11 underpayment of overtime pay to Class Members over the relevant time period. For example, the
12 above described off the clock work addressed above caused Plaintiff to begin receiving overtime
13 pay later than they should have.

14 15. As a result of the above described requirements to work off the clock and
15 Defendant's failure to incorporate non-discretionary bonuses into the regular rate of pay used to
16 calculate and pay for overtime and double time, and the other wage violations they endured at
17 Defendants' hands, Class Members were not properly paid all wages earned and all wages owed to
18 them by Defendants, including when working more than eight (8) hours in any given day and/or
19 more than forty (40) hours in any given week.

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

27 17. Therefore, from at least four (4) years prior to the filing of this lawsuit and
28 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class

1 Members for all hours worked, and failing to pay minimum wages for all time worked, as required
2 by California law. Defendants thus failed to pay Class Members at least minimum wages for all
3 the time they worked for Defendants in violation of the Labor Code and applicable IWC Wage
4 Orders as the actual times when Class Members were under the control and direction of
5 Defendants was under reported in the hours reflected on the timekeeping records. Furthermore,
6 Defendants' willful actions resulted in the systematic underpayment of wages to Class Members,
7 including underpayment of overtime pay to Class Members over a period of time.

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

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

26 20. On the occasions when Class Members worked over 10 hours in a shift, Defendants
27 also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a
28 result, Defendants' failure to provide Class Members with all legally required off-duty, unpaid

meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants also failed to pay Class Members "premium pay," i.e. one hour of wages at each Class Member's effective hourly rate of pay, for each meal period or rest break that Defendants failed to provide or deficiently provided.

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

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

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

23. Class Members were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks and were not provided with one (1) hour's wages in lieu thereof. Class Members were restricted in their ability

1 to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest
2 periods. Therefore, from at least four years prior to the filing of this lawsuit and continuing to the
3 present, Defendants have consistently failed to provide Class Members with paid rest breaks of not
4 less than ten minutes for every work period of four or more consecutive hours; or major fraction
5 thereof, nor did Defendant pay Class Members premium pay for each day on which requisite rest
6 breaks were not provided or were deficiently provided.

7 24. Rest period violations therefore arose in one or more of the following manners:

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

17 25. Defendants also consistently failed to issue accurate itemized wage statements as
18 required by Labor Code § 226(a). Specifically, the wage statements given to Class Members failed
19 to accurately account for unpaid wages and overtime because Defendants failed to incorporate
20 non-discretionary bonuses into the regular rate of pay used to pay overtime and double time, and
21 their actual hours worked were under-reported due to off the clock work. Additionally, the wage
22 statements given to Class Members failed to accurately account for premium pay for deficiently
23 provided meal periods and rest breaks.

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

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

6 27. 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, internet expenses, and tools including drills, drill bits, wrenches, hobby knives,
10 and magnets. Upon information and belief, Class Members incurred similar costs. These expenses
11 incurred by Class Members were necessary and required of them in performing their assigned job
12 duties, but Defendants failed to reimburse Class Members for all such necessary expenditures,
13 thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and
14 the applicable provisions of the IWC Wage Orders.

15 28. Defendant failed to always provide the Class Members with paid sick days. In
16 violation of Labor Code § 246, the Class Members worked for the Employer for 30 or more days
17 after July 1, 2015, yet the Employer did not always pay for all requested sick days under Labor
18 Code § 246(a)(1). As such, the Employer owes the Employee and other Class Members unpaid
19 sick days and/or accrued sick days and owes penalties under Labor Code §§ 2699(a)/(f), 248.5,
20 and/or 558.

21 29. Defendant offered the Class Members vacation benefits. However, in violation of
22 Labor Code § 227.3, the Employee and other Class Members separated from the Employer's
23 employment without receiving all vacation benefits accrued and owing. As such, the Employer
24 owes the Employee and other separated Class Members unpaid accrued vacation benefits and
25 owes penalties under Labor Code §§ 2699(a)/(f) and/or 558.

26 30. Labor Code § 212(a)(1) states: "No person, or agent or officer thereof, shall issue
27 in payment of wages due, or to become due, or as an advance on wages to be earned: (1) Any
28 order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is

negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.” Labor Code § 213(d) states “If an employer discharges an employee or the employee quits, the employer may pay the wages earned and unpaid at the time the employee is discharged or quits by making a deposit authorized under this subdivision, provided that the employer complies with the provisions of this article relating to the payment of wages upon termination or quitting of employment.” Labor Code § 213(d) also provides that such payment of final wages by employers to employees does not violate Labor Code § 212 “provided that the employee has voluntarily authorized the deposit.” Here, the Employer paid final wages to the Employee and other Class Members via pay card, even though they had not voluntarily authorized said deposit of their wages via said pay card. Therefore, due to its violations of Labor Code §§ 212 and 213(d), the Employer owes penalties under Labor Code §§ 2699(f).

31. In light of the foregoing, Plaintiff and Class Members bring this action pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 212, 226, 226.3, 226.7, 246, 248, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802 and California Code of Regulations, Title 8, section 11000 *et seq.*

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

CLASS ALLEGATIONS

33. Plaintiff seeks to represent the Subclasses composed of and defined as follows:

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

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

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. Vacation Pay Subclass. All Class Members who were not paid for
13 accrued vacation time upon separation.

14 g. Subclass 7. Termination Pay Subclass. All Class Members who, within the
15 applicable limitations period, either voluntarily or involuntarily separated from their employment
16 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
17 termination.

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

21 i. Subclass 9. Payroll Records Subclass. All Class members who were subject to
22 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
23 by California wage-and-hour laws.

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. Sick Pay Subclass. All Class Members who were subjected to
28 Defendants' policies and practices regarding entitlement to paid sick days as specified in Labor

Code § 246.

1. Subclass 13. Pay Card Subclass. All Class Members who were subjected to Defendants' policies and practices regarding Labor Code § 212.

m. Subclass 14. UCL Subclass. All Class Members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

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

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

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

A. Numerosity

37. The potential members of the class as defined are so numerous that joinder of all the member of the class 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, hundreds of employees who satisfy the Class definition within the State of California.

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

B. Commonality

39. 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;

- 1 k. Whether Defendants violated Labor Code § 204 by failing to timely pay wages;
- 2 l. Whether Defendants violated Labor Code § 2802 by failing to reimburse all
- 3 necessary business expenses Defendants required them to incur in performing their
- 4 job duties;
- 5 m. Whether Defendants violated Labor Code § 246;
- 6 n. Whether Defendants violated Labor Code 227.3 by failing to pay Class Members
- 7 for accrued vacation time upon separation;
- 8 o. Whether Defendants violated Labor Code § 212;
- 9 p. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 10 q. Whether Class Members are entitled to equitable relief pursuant to Business and
- 11 Professions Code § 17200 *et seq.*

12 **C. Typicality**

13 40. The claims of the named plaintiff is typical of those of Class Members. The Class

14 Members all sustained injuries and damages arising out of and caused by Defendants' common

15 course of conduct in violation of statutes, as well as regulations that have the force and effect of

16 law, as alleged herein.

17 **D. Adequacy of Representation**

18 41. Plaintiff will fairly and adequately represent and protect the interest of the Class

19 Members. Counsel who represents Class Members are experienced and competent in litigating

20 employment class actions.

21 **E. Superiority of Class Action**

22 42. A class action is superior to other available means for the fair and efficient

23 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and

24 questions of law and fact common to all Class Members predominate over any questions affecting

25 only individual Class Members. Each Class Member has been damaged and is entitled to recovery

26 by reason of Defendants' illegal policies or practices of failing to compensate Class Members

27 properly.

28 43. As to the issues raised in this case, a class action is superior to all other methods for

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

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

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

27 46. Class Members did not discover the fact that they were entitled to all pay under the
28 Labor Code until shortly before the filing of this lawsuit nor was there ever any discussion about

1 Plaintiff's and the Class' waiver of their Constitutional rights of trial by jury, right to collectively
2 organize and oppose unlawful pay practices under California law as well as obtain injunctive relief
3 preventing such practices from continuing. As a result, the applicable statutes of limitation were
4 tolled until such time as Plaintiff and the Class Members discovered their claims.

5 **FIRST CAUSE OF ACTION**
6 **FAILURE TO PAY MINIMUM WAGES**
7 **(Against All Defendants)**

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

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

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

28 50. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:

1 “The minimum wage for employees fixed by the commission is the minimum wage to be paid to
2 employees, and the payment of a less wage than the minimum so fixed is unlawful.”

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

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

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

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

62. By their conduct, as set forth herein, Defendants violated California Labor Code §

1 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Class
2 Members: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8)
3 hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours
4 worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for
5 hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of
6 eight (8) hours on any seventh day of work in a workweek.

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

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

23 65. Additionally, Labor Code § 558(a) provides "any employer or other person acting
24 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
25 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
26 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
27 pay period for which the employee was underpaid in addition to an amount sufficient to recover
28 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each

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

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

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

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

23 **THIRD CAUSE OF ACTION**

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

25 **(Against All Defendants)**

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

28 70. Class Members regularly worked shifts greater than five (5) hours and in some

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

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

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

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

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

28 ///

1 **FOURTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

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

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

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

26 80. Defendants failed to authorize and permit Class Members to take rest periods, as
27 required by the Labor Code. Moreover, Defendants did not compensate Class Members with an
28 additional hour of pay at each Class Member's effective hourly rate for each day that Defendants

1 failed to provide them with adequate rest breaks, as required under Labor Code § 226.7.

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

7 **FIFTH CAUSE OF ACTION**
8 **VIOLATION OF LABOR CODE § 226(a)**
9 **(Against All Defendants)**

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

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

19 84. Defendants failed to provide Class Members with accurate itemized wage
20 statements in writing, as required by the Labor Code. Specifically, the wage statements given to
21 Class Members failed to accurately account for unpaid wages and overtime because Defendants
22 failed to incorporate non-discretionary bonuses into the regular rate of pay, and their actual hours
23 worked were under-reported due to off the clock work. Moreover, the wage statements given to
24 Class Members failed to accurately account for premium pay for deficiently provided meal periods
25 and rest breaks.

26 85. Throughout the liability period, Defendants intentionally failed to furnish to Class
27 Members, upon each payment of wages, itemized statements accurately showing: (1) gross wages
28 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any

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

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

24 87. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code
25 § 226(a), Class Members suffered injuries, including among other things confusion over whether
26 they received all wages owed them, the difficulty and expense involved in reconstructing pay
27 records, and forcing them to make mathematical computations to analyze whether the wages paid
28 in fact compensated them correctly for all hours worked.

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

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

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

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

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

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

93. Defendants failed to pay Class Members without abatement, all wages as defined by applicable California law. Specifically, Plaintiff and Class Members were not paid all regular and overtime wages because Defendants failed to pay for all hours worked by requiring off the clock work and failing to incorporate non-discretionary bonuses into the regular rate of pay used to calculate and pay for overtime and double time. Additionally, Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

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

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

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

96. Labor Code § 204 instructs that: “All wages, ...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, 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 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned between the 16th and the last day of the month between the 1st and 10th day of the following month. Defendants similarly failed to pay all wages earned by not more than seven calendar days following the close of the payroll period. These failures arose from Defendants’ failure to pay for all hours worked.

97. 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, as addressed in detail above. Additionally, wages required by Labor Code § 1194 and other sections became due and payable to each Class Member in each pay period that he or she was not provided with a meal period or rest period or paid straight or overtime wages or commissions to which he or she was entitled.

98. Defendants thus violated Labor Code § 204 by systematically refusing to pay wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the

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

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

13 **EIGHTH CAUSE OF ACTION**

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

16 **(Against All Defendants)**

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

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

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

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

1 **NINTH CAUSE OF ACTION**

2 **REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802**

3 **(Against All Defendants)**

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

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

9 106. Defendants have regularly required Class Members to incur business expenses in the
10 course of performing their required job duties for Defendants including for cell phone expenses,
11 internet expenses, and tools including drills, drill bits, wrenches, hobby knives, and magnets. These
12 expenses incurred by Class Members were necessary and required of them in performing their
13 assigned job duties, but Defendants failed to reimburse Class Members for all such necessary
14 expenditures. Class Members were not reimbursed for those lawful and necessary work related
15 expenses or losses incurred in direct discharge of their job duties during employment with
16 Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the
17 applicable IWC Wage Orders, paragraph 9.

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

21 **TENTH CAUSE OF ACTION**

22 **VIOLATION OF LABOR CODE §246**

23 **(Against All Defendants)**

24 108. Plaintiff incorporates by reference and realleges each and every one of the allegations
25 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

26 109. Labor Code §246(a) states: "(a) An employee who, on or after July 1, 2015, works
27 in California for the same employer for 30 or more days within a year from the commencement of
28 employment is entitled to paid sick days as specified in this section.

110. Labor Code §246(b)(1) states: “An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.” Labor Code §§246 goes on to describe how employers can remain compliant with Labor Code §246.

111. Labor Code §246(i) states in pertinent part: “An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee's itemized wage statement “unlimited.”

112. Defendants, as a matter of established company policy and procedure, at each and every one of the individual facilities owned and/or operated by Defendants, during the relevant time period:

- a. Administered a uniform company policy and practice as to the pay policies regarding Plaintiff and the members of the LC 246 Class; and
- b. Failed to provide Plaintiff and the members of the LC 246 Class paid sick days in a manner that fully complies with Labor Code §246.

113. Defendants’ pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by the members of the LC 246 Class, in a civil action, to the extent allowed by law.

114. Pursuant to Labor Code §2699(e) (which provides that for all provisions of the Labor Code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions), the members of the Classes seek recovery of the applicable civil penalties pursuant to Labor Code §2699(e)(2) as follows:

- a. Penalties under Labor Code §2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically provided, in the amount of one hundred

dollars (\$100.00) for each aggrieved employee per pay period for the initial violation; and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation; and

b. Any and all additional penalties and sums as provided by the Labor Code and/or other relevant statutes.

115. Further, Plaintiffs are entitled to recover reasonable attorneys' fees and costs pursuant to Labor Code §§2699(g)(1), 218.5 and any other applicable statute.

ELEVENTH CAUSE OF ACTION
FAILURE TO PAY VESTED VACATION PAY
(Against All Defendants)

116. Plaintiff incorporates by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

117. Labor Code § 227.3 states in pertinent part, "[W]henever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination."

118. During their employment by Defendants, the members of the Vacation Pay Class were eligible to receive vacation pay under Defendants' vacation pay policy.

119. During their employment by Defendants, the members of the Vacation Pay Class accrued vacation time as set forth above.

120. The members of the Vacation Pay Class separated from their employment with Defendants during the relevant time period.

121. Each member of the Vacation Pay Class separated from their employment with Defendants without having been paid for all vested vacation time.

122. Defendants' consistent and uniform vacation pay policies, practices and procedures

1 resulted in Defendants failing to timely pay as wages at the final wage rate all vested vacation time
2 due and owing to the members of the Vacation Pay Class after their separation.

3 123. As such, the members of the Vacation Pay Class are entitled to damages and
4 restitution in an amount according to proof at trial.

5 124. “Based on the plain and ordinary meaning of the statutory language, Labor Code
6 section 227.3 cannot be interpreted to exclude unused vacation that vested more than two or four
7 years before the employee was terminated from the unused vacation time for which a terminated
8 employee must be paid.” (*Church v. Jamison* (2006) 143 Cal.App.4th 1568, 1580.) Further, “Labor
9 Code section 227.3 cannot itself be the source of a look-back period that limits the right to recover
10 for unused vested vacation.” (*Id.* at p. 1581.)

11 125. Under Labor Code § 218.6 and Civil Code § 3287, the members of the Vacation
12 Pay Class seek recovery of pre-judgment interest on all amounts recovered herein.

13 126. Under Labor Code § 218.5 and Civil Code § 3287, the members of the Vacation
14 Pay Class request that the Court award reasonable attorneys’ fees and costs incurred by them in
15 this action.

16 **TWELFTH CAUSE OF ACTION**
17 **VIOLATIONS OF LABOR CODE § 212**
18 **(Against All Defendants)**

19 127. Plaintiffs incorporate by reference and reallege each and every one of the
20 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
21 forth herein.

22 128. Labor Code § 212 states in pertinent part:

23 (a) No person, or agent or officer thereof, shall issue in payment of wages due, or to
24 become due, or as an advance on wages to be earned:

25 (1) Any order, check, draft, note, memorandum, or other acknowledgment of
26 indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at
27 some established place of business in the state, the name and address of which must appear
28 on the instrument, and at the time of its issuance and for a reasonable time thereafter,

1 which must be at least 30 days, the maker or drawer has sufficient funds in, or credit,
2 arrangement, or understanding with the drawee for its payment;

3 (2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or
4 purporting to be payable or redeemable otherwise than in money.

5 (b) Where an instrument mentioned in subdivision (a) is protested or dishonored, the notice
6 or memorandum of protest or dishonor is admissible as proof of presentation, nonpayment
7 and protest and is presumptive evidence of knowledge of insufficiency of funds or credit
8 with the drawee.

9 129. Defendants had a consistent and uniform policy, practice, and procedure of
10 willfully failing to comply with Labor Code § 212, in that they paid the members of the Class their
11 final pay via a prepaid debit card.

12 130. Defendants' violation of Labor Code § 212 was willful, thus entitling the Class
13 Members to damages, according to proof.

14 **THIRTEENTH CAUSE OF ACTION**

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

16 **(Against All Defendants)**

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

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

24 133. Plaintiff is a "person" within the meaning of Business & Professions Code
25 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
26 relief, restitution, and other appropriate equitable relief.

27 134. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
28 business practices. By the conduct alleged herein, Defendants' practices were deceptive and

1 fraudulent in that Defendants' policy and practice failed to provide the required amount of
2 compensation for missed meal and rest breaks, and failed to adequately compensate Class
3 Members for all hours worked, due to systematic business practices as alleged herein that cannot
4 be justified, pursuant to the applicable California Labor Code and Industrial Welfare Commission
5 requirements in violation of California Business and Professions Code §§ 17200, *et seq.*, and for
6 which this Court should issue injunctive and equitable relief, pursuant to California Business &
7 Professions Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

27 139. By the conduct alleged herein, Defendants have engaged and continue to engage in
28 a business practice which violates California and federal law, including but not limited to, the

1 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
2 Code including Sections 203, 204, 226, 226.7, 512, 1194, 1197, and 1198, for which this Court
3 should issue declaratory and other equitable relief pursuant to California Business & Professions
4 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
5 competition, including restitution of wages wrongfully withheld.

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

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

15 **RELIEF REQUESTED**

16 WHEREFORE, Plaintiff prays for the following relief:

- 17 1. For an order certifying this action as a class action;
- 18 2. For compensatory damages in the amount of the unpaid minimum wages for work
19 performed by Class Members and unpaid overtime compensation from at least four (4) years prior
20 to the filing of this action, as may be proven;
- 21 3. For liquidated damages in the amount equal to the unpaid minimum wage and
22 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 23 4. For compensatory damages in the amount of all unpaid wages, including overtime
24 and double-time pay, as may be proven;
- 25 5. For compensatory damages in the amount of the hourly wage made by Class
26 Members for each missed or deficient meal period where no premium pay was paid therefor from
27 four (4) years prior to the filing of this action, as may be proven;
- 28 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 § 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;

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

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

10. For penalties pursuant to Labor Code § 227.3 for all Class Members who were not paid for all accrued vacation time at separation.

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

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

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

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

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

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

17. For an award of attorneys' fees; and

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

DATED: March 5, 2026

D.LAW, INC.

By: _____

Natalie Haritoonian

Jonas Agle

Attorneys for Plaintiff MATEO JOHNSTON,
and all others similarly situated

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DATED: March 5, 2026

By: _____
Natalie Haritoonian
Jonas Agle
Attorneys for Plaintiff MATEO JOHNSTON,
and all others similarly situated