

D.LAW, INC.
Emil Davtyan (SBN 299363)
emil@d.law
Roman Shkodnik (SBN 285152)
r.shkodnik@d.law
Amanda Fazio (SBN 346350)
a.fazio@d.law
880 E Broadway
Glendale, CA 91205
Telephone: (818) 962-6465
Facsimile: (818) 962-6469

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DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
david@yeremianlaw.com
880 E Broadway
Glendale, CA 91205
Telephone: (818) 962-6465
Fax: (818) 962-6469
Attorneys for Plaintiff MARISSA BROWN,
on behalf of herself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

MARISSA BROWN, on behalf of herself and
others similarly situated,

Plaintiff,

vs.

JAZZ PHARMACEUTICALS, INC., a
Delaware Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. 23CV422390

CLASS ACTION

Assigned for All Purposes To:

Hon. Theodore C Zayner

Dept.: 19

**FIRST AMENDED CLASS
ACTION COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime
Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code §
226.7;
4. Rest-Break Liability Under Labor Code §
226.7;
5. Failure to Pay Vacation Wages
6. Failure to Comply with Labor Code § 245 *et*
seq. and 246
7. Reimbursement of Necessary Expenditures
Under Labor Code § 2802;
8. Violation of Labor Code § 226(a);
9. Failure to Keep Required Payroll
Records Under Labor Code §§ 1174 and
1174.5
10. Penalties Pursuant to Labor Code § 203; and
11. Violation of Business & Professions Code §
17200 *et seq.*
12. Penalties Pursuant to Labor Code § 2699, *et*
seq.

DEMAND FOR JURY TRIAL

1 Plaintiff MARISSA BROWN, (“Plaintiff”) on behalf of herself and all others similarly
2 situated (collectively, “Employees”; individually, “Employee”) complains of Defendants, and each
3 of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of herself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants JAZZ
8 PHARMACEUTICALS, INC., a Delaware Corporation, and DOES 1 through 50 (all defendants
9 being collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each
10 of them, violated various provisions of the California Labor Code, relevant orders of the Industrial
11 Welfare Commission (IWC) and California Business & Professions Code, and seeks redress,
12 therefore.

13 2. Plaintiff was a resident of California and during the time period relevant to this
14 Complaint and was employed by Defendants as a non-exempt hourly employee within the State of
15 California at Defendants’ facilities and offices in California. Plaintiff and the other Class members
16 worked for Defendants in California and Santa Clara County, and in other nonexempt positions,
17 throughout California, and consistently worked at Defendants’ behest without being paid all wages
18 due. More specifically, Plaintiff and the other similarly situated Class members were employed by
19 Defendants and worked at Defendants’ offices and other facilities where the conduct giving rise to
20 the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff
21 was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was
22 subjected to the same policies and practices, and (3) endured similar violations at the hands of
23 Defendants as the other Employee Class members who served in similar and related positions.

24 3. Defendants required Plaintiff and the Employees in the Class to perform work
25 while remaining under Defendants’ control before and after being on the clock for their daily work
26 shift. Defendants also failed to provide Plaintiff and the Class with lawful meal and rest periods,
27 as employees were not provided with the opportunity to take timely, uninterrupted, and duty-free
28 meal and rest periods as required by the Labor Code.

1 **THE PARTIES**

2 **A. The Plaintiff**

3 4. Plaintiff MARISSA BROWN has resided in California and during the time period
4 relevant to this Complaint and was employed by Defendants as a non-exempt hourly employee
5 within the State of California.

6 **B. The Defendants**

7 5. Defendant JAZZ PHARMACEUTICALS, INC., ("JP") is a Delaware corporation
8 with its principle executive offices in Palo Alto, California, and has been listed as the employer on
9 the wage statements issued during the relevant time period. JP lists a California address in Palo
10 Alto California with the California Secretary of State and employs Plaintiff and the Class
11 members in Santa Clara County, including at Defendants' offices and facilities in Palo Alto,
12 California, and throughout California and conducts business throughout California.

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

21 7. Plaintiff is informed and believe and thereon alleges that each Defendant acted in
22 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
23 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
24 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
25 all respects as the employers or joint employers of Employees. Defendants, and each of them,
26 exercised control over the wages, hours or working conditions of Employees, or suffered or
27 permitted Employees to work, or engaged, thereby creating a common law employment
28 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly

1 employed Employees.

2 **JURISDICTION AND VENUE**

3 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
4 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
5 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
6 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
7 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
8 obligations and liabilities giving rise to this lawsuit occurred at least in part in Santa Clara County
9 and Defendants maintain and operate company offices and facilities in Santa Clara County and
10 employ Plaintiff and other Class members in California Santa Clara County and throughout
11 California.

12 **FACTUAL BACKGROUND**

13 9. The Employees who comprise the Class and Collective, including Plaintiff, is a
14 nonexempt employee pursuant to the applicable Wage Order of the IWC. Defendants hire
15 Employees who work in nonexempt positions at the direction of Defendants in the State of
16 California. Plaintiff and the Class members were either not paid by Defendants for all hours
17 worked or were not paid at the appropriate minimum, regular and overtime rates. Furthermore, the
18 uncompensated time included the time Employees worked off-the-clock during meal periods and
19 as a result of Defendants' culture of working through meal and rest periods to meet deadlines.
20 Plaintiff also contends that Defendants failed to pay Plaintiff and the Class members all wages due
21 and owing, failed to provide meal and rest breaks, and failed to furnish accurate wage statements,
22 all in violation of various provisions of the California Labor Code and applicable Wage Orders.
23 Additionally, Defendants paid Plaintiffs and Employees nondiscretionary commissions, incentive
24 pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
25 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
26 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
27 the overtime wage rate. Therefore, during times when Plaintiffs and Employees worked overtime
28 and received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,

1 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

2 10. From at least four (4) years prior to the filing of this lawsuit and continuing to the
3 present, Defendants paid Plaintiffs and Employees nondiscretionary commissions, incentive pay,
4 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
5 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
6 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
7 sick pay. Therefore, during times when Plaintiffs and Employees worked overtime and received
8 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed
9 to pay all sick pay by paying a lower overtime rate than required.

10 11. From at least four (4) years prior to the filing of this lawsuit and continuing to the
11 present, Defendants paid Plaintiffs and Employees nondiscretionary commissions, incentive pay,
12 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
13 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
14 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
15 vacation pay. Therefore, during times when Plaintiffs and Employees worked overtime and
16 received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
17 Defendants failed to pay all vacation pay by paying a lower overtime rate than required.

18 12. During the course of Plaintiff and the Class members' employment with
19 Defendants, they were not paid all wages they were owed, including for all work performed and
20 for all overtime hours worked and were forced to work during their meal and rest breaks to keep
21 labor budgets low.

22 13. As a matter of Company culture, Plaintiff and the Class members were required to
23 work during their meal breaks which were not compensated by Defendants in violation of the
24 California Labor Code. Plaintiff and the Class members were also not paid regular wages and
25 overtime for the time they were required to comply with other requirements imposed upon them,
26 which they had to complete while working through their meal breaks and without compensation.
27 As a result Plaintiff and the Class members worked shifts over eight (8) hours in a day and over
28 forty (40) hours in a work week, but they were not paid at the appropriate overtime rate for all

1 such hours, including by being required to perform work duties and tasks without pay and while
2 off-the-clock which caused overtime to begin accruing before it did in Defendants' timekeeping
3 and payroll systems. As a result, Plaintiff and the Class members worked substantial overtime
4 hours during their employment with Defendants for which they were not compensated, in
5 violation of the California Labor Code, applicable IWC Wage Orders.

6 14. As a result of the above described daily work demands and pressures to work
7 through breaks, and the other wage violations they endured at Defendants' hands, Plaintiff and the
8 Class members were not properly paid for all wages earned and for all wages owed to them by
9 Defendants, including when working more than eight (8) hours in any given day and/or more than
10 forty (40) hours in any given week. As a result of Defendants' unlawful policies and practices,
11 Plaintiff and Class members incurred overtime hours worked for which they were not adequately
12 and completely compensated. To the extent applicable, Defendants also failed to pay Plaintiff and
13 the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the
14 seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular
15 rate for hours worked over eight (8) on the seventh consecutive work day, as required under the
16 Labor Code, applicable IWC Wage Orders.

17 15. Therefore, from at least four (4) years prior to the filing of this lawsuit and
18 continuing to the present, Defendants had a consistent policy or practice of failing to pay
19 Employees for all hours worked, and failing to pay minimum wage for all time worked as required
20 by California Law.

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

27 17. Additionally from at least four (4) years prior to the filing of this lawsuit and
28 continuing to the present, Defendants have regularly required Employees to work shifts in excess

1 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty
2 (30) minutes and shifts in excess of ten (10) hours without providing them with second meal
3 periods of not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one
4 hour of wages at each Employee’s effective regular rate of pay, for each meal period that
5 Defendants failed to provide or deficiently provided.

6 18. From at least four (4) years prior to the filing of this lawsuit and continuing to the
7 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
8 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
9 Defendant pay Employees premium pay for each day on which requisite rest breaks were not
10 provided or were deficiently provided at one hour of wages at each Employee’s effective regular
11 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

12 19. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
13 continuing to the present, Defendants have consistently failed to provide Employees with timely,
14 accurate, and itemized wage statements as required by California wage-and-hour laws.
15 Specifically, the wage statements given to Employees by Defendants failed to accurately account
16 for wages, overtime, and premium pay for deficient meal periods and rest breaks, all of which
17 Defendants knew or reasonably should have known were owed to Employees, as alleged
18 hereinabove. The wage statements provided to Employees were confusing and required
19 Employees to engage in discovery and refer to outside sources to verify whether their pay was
20 correct and potentially resulting in a miscalculation by the Employees.

21 20. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
22 continuing to the present, Defendants have consistently failed to provide Employees with timely,
23 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

24 21. From at least four (4) years prior to the filing of this lawsuit and continuing to the
25 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
26 performance of their job duties for Defendants including, but not limited to, the cell phone usage,
27 and internet usage which were necessary to perform their duties under Defendants’ employ in
28 violation of Labor Code § 2802.

22. Additionally, from at least three (3) years prior to the filing of this lawsuit, and continuing to the present, Defendants have consistently failed to keep accurate time and wage records as required by California wage-and-hour laws.

23. Additionally, from at least four (4) years prior to filing this lawsuit and continuing to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.

24. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 226, 226.4, 226.7, 227.3, 245, *et seq*, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1199, 2699, *et seq*, and 2802.

25. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code.

CLASS ALLEGATIONS

26. Plaintiff bring this class action on behalf of herself an all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows: all individuals employed by Defendants, at any time within four (4) years of the filing of this lawsuit and have been employed by Defendants within the State of California.

27. Further, Plaintiff seeks to represent the following Subclasses composed of and defined as follows:

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

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

c. Subclass 3. Vacation Wages Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their vacation wages.

d. Subclass 4. Sick Pay Subclass. All Class members who were subject to Defendants'

1 policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty free meal
2 periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

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

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

10 g. Subclass 7. Payroll Records Subclass. All Class members who were subject to
11 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
12 by California wage-and-hour laws.

13 h. Subclass 8. Wage Statement Subclass. All Class members who, within the
14 applicable limitations period, were not provided with accurate itemized wage statements.

15 i. Subclass 9. Failure to Reimburse for Necessary Business Expenditures. All Class
16 members who were subject to Defendants failing to reimburse for expenses necessarily incurred in
17 the performance of Employees job duties for Defendants which were necessary to perform their
18 duties under Defendants' employ.

19 j. Subclass 10. Termination Pay Subclass. All Class members who, within the
20 applicable limitations period, either voluntarily or involuntarily separated from their employment
21 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
22 termination.

23 k. Subclass 11. UCL Subclass. All Class members who are owed restitution as a
24 result of Defendants' business acts and practices, to the extent such acts and practices are found to
25 be unlawful, deceptive, and/or unfair.

26 28. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
27 modify the class description with greater particularity or further division into subclasses or
28 limitation to particular issues.

29. 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

30. 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 believe that Defendants employ or, during the time period relevant to this lawsuit, employed more than 100 individuals were employed by Defendant's within the State of California.

31. 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

32. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. These common questions of law and fact include:

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants failed to pay Employees vacation wages as required under Labor Code § 227.3;
- e. Whether Defendants failed to pay Employees sick pay as required under Labor Code § 245;
- f. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- g. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage

Orders, by failing to provide Employees with requisite rest breaks or premium pay in lieu thereof;

h. Whether Defendants violated Labor Code § 226(a);

i. Whether Defendants violated Labor Code §§ 1174 and 1174.5;

j. Whether Defendants failed to reimburse Employees for necessary business expenses;

k. 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;

l. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;

m. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*; and

n. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

33. The claims of the named plaintiffs are typical of those of the other Employees. Employees all sustained injuries and damages arising out of and caused by Defendant's common course of conducts in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

D. Adequacy of Representation

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

E. Superiority of Class Action

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

36. Class action treatment will allow those persons similarly situated to litigate their

1 claims in the manner that is most efficient and economical for the parties and the judicial system.
2 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

5 **(Against All Defendants)**

6 37. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
7 full herein.

8 38. Defendants failed to pay Employees minimum wages for all hours worked.

9 39. Defendants had a common policy and practice of misstating Employees time
10 records and failing to pay Employees for all hours worked. Employees would work hours and not
11 receive wages, including as alleged above in connection with working during meal periods, and
12 time off the clock Employees without compensation. Specifically, Plaintiff and Employees were
13 required to perform work during meal periods and rest periods (when such meal and rest periods
14 were taken), due to rigid deadlines and understaffing. Additionally, Defendants had a consistent
15 policy of failing to pay Employees for hours worked during alleged meal and rest periods for
16 which Employees were consistently denied, as also addressed herein. During the relevant time
17 period, Defendants did not pay Plaintiff and Employees at the applicable minimum wage for all
18 hours worked. Defendants' uniform pattern of unlawful wage and hour practices manifested,
19 without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy
20 and practice that denied accurate compensation to Plaintiff and the other members of the Class as
21 to minimum wage pay.

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

26 41. The applicable minimum wages fixed by the commission for work during the
27 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
28 therefore entitled to double the minimum wage during the relevant period.

1 42. The minimum wage provisions of California Labor Code are enforceable by private
2 civil action pursuant to California Labor Code § 1194(a) which states:

3 Notwithstanding any agreement to work for a lesser wage, any
4 employee receiving less than the legal minimum wage or the legal
5 overtime compensation applicable to the employee is entitled to
6 recover in a civil action the unpaid balance of the full amount of
7 this minimum wage or overtime compensation, including interest
8 thereon, reasonable attorney's fees and costs of suit.

9 43. 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.

11 44. California Labor Code § 1194.2 also provides for the following remedies:

12 In any action under Section 1194 . . . to recover wages because of
13 the payment of a wage less than the minimum wages fixed by an
14 order of the commission, an employee shall be entitled to recover
15 liquidated damages in an amount equal to the wages unlawfully
16 unpaid and interest thereon.

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

20 46. Wherefore, Employees are entitled to recover the unpaid minimum wages
21 (including double minimum wages), liquidated damages in an amount equal to the minimum
22 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
23 to California Labor Code § 1194(a).

24 **SECOND CAUSE OF ACTION**

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

26 **(Against All Defendants)**

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

1 48. By their conduct, as set forth herein, Defendants violated California Labor Code §
2 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
3 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
4 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
5 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
6 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
7 (8) hours on any seventh day of work in a workweek.

8 49. Defendants had a common policy and practice of requiring Plaintiff and Employees
9 to perform work, off the clock for which they were not paid wages. Specifically, Plaintiff and
10 Employees were required to perform work during meal periods (when such meal periods were
11 taken), which included work related tasks. All the forgoing work was performed by Employees
12 and under the direction and control of Defendants, for which no wages were paid.

13 50. The forgoing uncompensated work caused Plaintiff and Employees to work in
14 excess of eight (8), ten (10), and twelve (12) hours a day, and/or forty (40) hours a week, entitling
15 them to overtime and double-time wages which were systemically denied.

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

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

24 53. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
25 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for the
26 full amount of all their unpaid wages and overtime compensation, with interest, plus their
27 reasonable attorneys' fees and costs.

28 ///

1 **THIRD CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

11 56. Defendants had a common practice and policy of denying Plaintiff and Employees
12 the opportunity to take 30-minute uninterrupted meal periods, in accordance with California Law.
13 Specifically, Plaintiff and Employees were denied meal periods altogether. Moreover, as discussed
14 above, Defendants had a common policy and practice of requiring plaintiff and Employees to
15 complete work-related assignments during meal periods.

16 57. Moreover, Defendants failed to compensate Employees for each meal period not
17 provided or inadequately provided, as required under Labor Code § 226.7. Additionally, as
18 detailed above, when Defendants did pay meal period premiums, they did so at the normal regular
19 rate of pay without factoring in all forms or remuneration/compensation or by otherwise
20 incorrectly calculating the regular rate.

21 58. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
22 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal
23 period not provided or deficiently provided, a sum to be proven at trial.

24 **FOURTH CAUSE OF ACTION**

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

26 **(Against All Defendants)**

27 59. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
28 full herein.

1 60. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
2 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
3 not less than ten (10) minutes for each consecutive four (4) hour shift.

4 61. Defendants have had a common policy and practice of consistently failing to
5 provide Plaintiff and Employees with the opportunity to take paid rest breaks of not less than ten
6 (10) minutes for each consecutive four (4) hour shift. Plaintiff and Employees were required to
7 work through their rest breaks, which were systemically denied due to demanding deadlines.

8 62. Moreover, Defendants did not compensate Employees with an additional hour of
9 pay at each Employee's effective hourly rate for each day that Defendants failed to provide them
10 with adequate rest breaks, as required under Labor Code § 226.7. Additionally, as detailed above,
11 when Defendants did pay rest period premiums, they did so at the normal regular rate of pay
12 without factoring in all forms or remuneration/compensation or by otherwise incorrectly
13 calculating the regular rate.

14 63. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
15 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
16 worked without the required rest breaks, a sum to be proven at trial.

17 **FIFTH CAUSE OF ACTION**
18 **FAILURE TO PAY VACATION WAGES**
19 **(Against All Defendants)**

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

22 65. Pursuant to California Labor Code § 227.3, whenever a contract of employment or
23 employment policy provides for paid vacation and an employee is terminated without having
24 taken off her vested vacation time, all vested vacation shall be paid to her as wages at her final rate
25 in accordance with said contract of employment or policy respecting eligibility or time served.

26 66. Defendants paid nondiscretionary commissions, incentive pay, and/or
27 nondiscretionary bonuses to Employees but Defendants failed to include these forms of
28 remuneration in the regular rate of pay upon which vacation wages were calculated and paid.

1 67. Therefore, pursuant to, Plaintiff and Employees seek to recover penalties pursuant
2 to Labor Code § 227.3.

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO COMPLY WITH LABOR CODE § 245 *ET SEQ.* AND 246**

5 **(Against All Defendants)**

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

8 69. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time
9 to Employees, including at the amount, terms, and rate of compensation set forth in said law. At
10 times relevant, Defendants have failed compute the amount due for paid sick time in conformance
11 with the pay calculation under California Labor Code § 246(1).

12 70. Defendants paid nondiscretionary commissions, incentive pay, and/or
13 nondiscretionary bonuses to Employees but Defendants failed to include these forms of
14 remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than
15 calculating the amount of paid sick time due when sick time is used according to the requirements
16 set forth in California Labor Code § 246(1), Defendants paid sick leave to Employees at a lower
17 rate, in violation of the law.

18 71. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor
19 Code § 245 *et seq.* and §§ 245 *et seq.* and 246.

20 **SEVENTH CAUSE OF ACTION**

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

22 **IN VIOLATION OF LABOR CODE § 2802**

23 **(Against All Defendants)**

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

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

74. Employees incurred necessary expenditures in the performance of their job duties for Defendants, namely the cost of cell phone usage and internet usage which were necessary to perform their duties under Defendants' employ. From four (4) years prior to the original filing of this lawsuit and continuing to the present, Defendants consistently failed to reimburse Employees for these necessarily incurred business expenses.

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

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

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

77. 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.

78. Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Employees by Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal and rest periods, all of which Defendants knew or reasonably should have known were owed to Employees, as alleged hereinabove.

79. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and

1 forcing them to make mathematical computations to analyze whether the wages paid in fact
2 compensated them correctly for all hours worked.

3 80. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
4 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
5 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
6 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
7 award of costs and reasonable attorneys' fees.

8 81. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a
9 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for
10 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
11 employee for each pay period.

12 82. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and
13 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be
14 shown according to proof.

15 **NINTH CAUSE OF ACTION**
16 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE §§ 1174**
17 **AND 1174.5**
18 **(Against All Defendants)**

19 83. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
20 full herein.

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

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

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

3 **TENTH CAUSE OF ACTION**

4 **VIOLATION OF LABOR CODE § 203**

5 **(Against All Defendants)**

6 87. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
7 full herein.

8 88. Numerous Employees are no longer employed by Defendants; they either quit
9 Defendants' employ or were fired therefrom.

10 89. Defendants failed to pay these Employees all wages due and certain at the time of
11 termination or within seventy-two (72) hours of resignation.

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

14 91. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
15 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
16 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
17 to thirty (30) days from the date they were due.

18 **ELEVENTH CAUSE OF ACTION**

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

20 **(Against All Defendants)**

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

23 93. Plaintiff, on behalf of herself, Employees, and the general public, brings this claim
24 pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in
25 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the
26 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
27 meaning of Code of Civil Procedure § 1021.5.

28 94. Plaintiff is a "person" within the meaning of Business & Professions Code

1 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
2 relief, restitution, and other appropriate equitable relief.

3 95. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
4 business practices.

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

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

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

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

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

26 101. Unless restrained by this Court Defendants will continue to engage in such
27 unlawful conduct as alleged above. Pursuant to the Business & Professions Code this Court should
28 make such orders or judgments, including the appointment of a receiver, as may be necessary to

1 prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice
2 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
3 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
4 failed to pay.

5 **TWELFTH CAUSE OF ACTION**
6 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**
7 **(Against All Defendants)**

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

10 103. Plaintiff and Employees are aggrieved employees as defined under Labor Code
11 §2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
12 alleged violators, Defendants.

13 104. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'
14 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the
15 penalty provisions, without limitation, based on the following California Labor Code sections:
16 201, 202, 203, 204, 218.5, 218.6, 226, 226.4, 226.7, 227.3, 245, *et seq*, 510, 512, 558, 558.1, 1174,
17 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1199, 2699, *et seq*, and 2802.

18 105. The penalties shall be allocated as follows: 75% to the Labor and Workforce
19 Development Agency (LWDA) and 25% to the affected employee.

20 106. Employees also seek any and all penalties and remedies set forth in Labor Code
21 § 558, which states:

- 22 (a) Any employer or other person acting on behalf of an employer
23 who violates, or causes to be violated, a section of this chapter or
24 any provision regulating hours and days of work in any order of the
25 Industrial Welfare Commission shall be subject to a civil penalty
26 as follows: (1) For any initial violation, fifty dollars (\$50) for each
27 underpaid employee for each pay period for which the employee
28 was underpaid in addition to an amount sufficient to recover
underpaid wages. (2) For each subsequent violation, one hundred
dollars (\$100) for each underpaid employee for each pay period for
which the employee was underpaid in addition to an amount
sufficient to recover underpaid wages. (3) Wages recovered
pursuant to this section shall be paid to the affected employee.

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

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

107. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

108. Plaintiff has exhausted his administrative remedy by sending a certified letter to the LWDA and Defendants postmarked on September 13, 2023. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the postmark date of the letters.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays 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 Employees 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 the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4)

1 years prior to the filing of this action, as may be proven;

2 5. For compensatory damages in the amount of all unpaid wages, including overtime
3 and double-time pay, as may be proven;

4 6. For compensatory damages in the amount of the hourly wage made by Employees
5 for each day requisite rest breaks were not provided or were deficiently provided where no
6 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
7 be proven;

8 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

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

11 9. For penalties pursuant to Labor Code § 1174.5, as may be proven;

12 10. For penalties pursuant to Labor Code § 227.3, as may be proven;

13 11. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;

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

16 13. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;

17 14. For compensatory damages in the amount of all previously unreimbursed business
18 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
19 from four (4) years prior to the original filing of this action, as may be proven;

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

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

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

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

26 19. For an award of attorneys' fees; and

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

28 ///

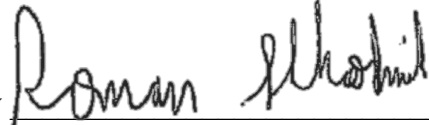
1 DATED: November 17, 2023

D.LAW, INC.

2

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By



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Emil Davtyan

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David Yeremian

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Roman Shkodnik

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Amanda Fazio

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Attorneys for Plaintiff

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MARISSA BROWN

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and the putative class

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DATED: November 17, 2023

By

Emil Davtyan
Roman Shkodnik
Amanda Fazio
Attorneys for Plaintiff
MARISSA BROWN
and the putative class

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

On November 17, 2023, I served the foregoing: **FIRST AMENDED CLASS ACTION COMPLAINT** on Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Cheryl D. Orr
cheryl.orr@faegredrinker.com
Caroline L. Guensberg
caroline.guensberg@faegredrinker.com
FAEGRE DRINKER BIDDLE & REATH LLP
Four Embarcadero Center, 27th Floor
San Francisco, California

☒ **(BY MAIL)** I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

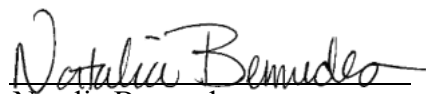
☒ **(COURTESY COPY BY ELECTRONIC TRANSMISSION)** by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

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

☐ **(BY ELECTRONIC SERVICE VIA CASE ANYWHERE)** Based on a court order, I caused the above-entitled document(s) to be served through Case Anywhere at www.caseanywhere.com addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the Case Anywhere Filing Receipt Page/Confirmation will be filed, deposited, or maintained with the original document(s) in this office.

☒ **(STATE)** I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 17, 2023, at Glendale, California.


Natalia Bermudes