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6 Attorneys for Plaintiff,

7 STEPHANIE FLORES, and all others similarly situated

(additional attorneys for Plaintiff on following page)

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10 **(UNLIMITED JURISDICTION)**

11 STEPHANIE FLORES, on behalf of herself, all
12 others similarly situated, and as an "aggrieved
13 employee" on behalf of other "aggrieved
14 employees" under the Labor Code Private
Attorneys General Act of 2004,

15 *Plaintiff,*

16 vs.

17 FREEDOM CARE LLC, a New York limited
18 liability company; FREEDOM CARE CA LLC,
19 a New York limited liability company; and
20 DOES 1-50, inclusive,

21 *Defendants.*

FILED

Superior Court of California
County of Los Angeles

03/12/2025

David W. Stryba, Executive Officer/Clerk of Court

By: T. Bivins Deputy

Case No. 23STCV23051

CLASS ACTION

**[PROPOSED] SECOND AMENDED
COMPLAINT FOR:**

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198)
2. Vacation Pay Forfeiture (Lab. Code § 227.3);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
5. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
6. Wage Statement Penalties (Lab. Code § 226);
7. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203);
8. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq; and
9. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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Plaintiff, Stephanie Flores (hereafter “Plaintiff” or “Flores”), on behalf of herself and all others similarly situated, the general public, and as an “aggrieved employee” on behalf of other “aggrieved employees” and the State of California under the Labor Code Private Attorneys General Act of 2004, complains and alleges as follows:

I. INTRODUCTION

1. Plaintiff brings this class and representative action for alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”), and the California Business and Professions Code against Defendants Freedom Care LLC, Freedom Care CA LLC, and Does 1 through 50, inclusive (collectively “Defendants”).

2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her and other similarly situated workers for unpaid wages, statutory and civil penalties, interest, and related relief. These claims are based on Defendants’ failures to:

(A) Pay all wages, including minimum, regular, overtime and doubletime wages, earned for all hours worked at the correct rates of pay;

(B) Pay all earned and unused vacation pay;

(C) Provide all meal periods;

(D) Authorize and permit all rest breaks;

(E) Pay premium wages for unprovided meal periods;

(F) Pay premium wages for unprovided rest breaks;

(G) Indemnify for necessary work-related expenditures;

(H) Issue only accurate and complete itemized wage statements;

(I) Timely pay wages upon termination of employment;

Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages, restitution, statutory and civil penalties, attorneys’ fees, costs, and related relief through this class and representative action.

II. THE PARTIES

3. Plaintiff Stephanie Flores is a resident of California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations § 11050 and an “aggrieved employee” within the meaning of Labor Code § 2699 (c).

4. Defendant Freedom Care LLC is a limited liability company organized and existing under the laws of New York and a citizen of California based on Plaintiff’s information



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1 and belief.

2 5. Defendant Freedom Care CA LLC is a limited liability company organized and
3 existing under the laws of New York and a citizen of California based on Plaintiff's information
4 and belief.

5 6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
6 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
7 is informed and believes and thereon alleges that said Defendants are legally responsible for the
8 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
9 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
when ascertained.

10 7. Plaintiff is informed and believes and thereon alleges that, at all relevant times
11 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
12 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
13 within the course and scope of such agency, employment, direction and control, and with the
14 approval and ratification of each of the other Defendants.

15 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
16 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
17 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
18 Members or otherwise complying with their rights in accordance with applicable California labor
laws as alleged herein.

19 **III. CLASS ALLEGATIONS**

20 9. This action has been brought and may be maintained as a class action pursuant to
21 California Code of Civil Procedure section 382 because there is a well-defined community of
22 interest among the persons who comprise the readily ascertainable class defined below and
23 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
a class action.

24 10. **Class Definition:** The Class is defined as follows: All persons Defendants
25 employed in California as hourly, non-exempt employees, including Centralized Form
26 Specialists, individuals performing work comparable to the aforementioned, compensated
27 comparably to the aforementioned, and individuals in similar positions, at any time during the
28 period beginning four years prior to the filing of this action and ending on the date that final



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judgment is entered in this action (“Class” or “Class Members”).

11. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

12. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California laws.

13. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime, meal period premium, rest period premium, rest and recovery, nonproductive time, reporting time, split shift, and vacation wages;

B. Whether Defendants failed to pay the Class Members all earned and unused vacation pay;

C. Whether Defendants failed to provide the Class Members with all meal periods in compliance with California law;

D. Whether Defendants failed to authorize and permit the Class Members to take all rest periods in compliance with California law;

E. Whether Defendants failed to indemnify the Class Members for the reasonable expenses they incurred during the course of performing their duties;

F. Whether Defendants knowingly and intentionally failed to provide the class with accurate and complete itemized wage statements;

G. Whether Defendants willfully failed to provide the class with timely final wages;

H. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code sections 17200, et seq., with respect to the Class; and

I. Whether Class Members are entitled to restitution of money or property that Defendants may have acquired from them through alleged Labor Code violations.



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1 14. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
2 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
3 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
4 Code, the Wage Order, and the Business and Professions Code.

5 15. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
6 in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
7 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
8 Members. Plaintiff will fairly and adequately represent and protect the interests of Class

9 16. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
10 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
11 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
12 Plaintiff and absent Class Members.

13 17. **Superiority:** A class action is vastly superior to other available means for fair and
14 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
15 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
16 and efficiently prosecute their common claims in a single forum without the unnecessary
17 duplication of effort and expense that numerous individual actions would entail. In addition, the
18 monetary amounts due to many individual Class Members are likely to be relatively small and
19 would thus make it difficult, if not impossible, for individual Class Members to both seek and
20 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
21 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
22 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

23 **IV. STATEMENT OF FACTS**

24 18. The Wage Order applies to "all persons employed in professional, technical,
25 mechanical, and similar occupations whether paid on a time, piece rate, commission, or other
26 basis..." Wage Order, § 1. The Wage Order defines "Professional, Technical, Clerical,
27 Mechanical, and Similar Occupations" to include

28 professional, semiprofessional, managerial, supervisory, laboratory, research,
technical, clerical, office work, and mechanical occupations. Said occupations
shall include, but not be limited to, the following: accountants; agents; appraisers;



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1 artists; attendants; audio-visual technicians; bookkeepers; bundlers; billposters;
2 canvassers; carriers; cashiers; checkers; clerks; collectors; communications and
3 sound technicians; compilers; copy holders; copy readers; copy writers; computer
4 programmers and operators; demonstrators and display representatives;
5 dispatchers; distributors; door-keepers; drafters; elevator operators; estimators;
6 editors; graphic arts technicians; guards; guides; hosts; inspectors; installers;
7 instructors; interviewers; investigators; librarians; laboratory workers; machine
8 operators; mechanics; mailers; messengers; medical and dental technicians and
9 technologists; models; nurses; packagers; photographers; porters and cleaners;
10 process servers; printers; proof readers; salespersons and sales agents; secretaries;
11 sign erectors; sign painters; social workers; solicitors; statisticians; stenographers;
12 teachers; telephone, radiotelephone, telegraph and call-out operators; tellers;
13 ticket agents; tracers; typists; vehicle operators; x-ray technicians; their assistants
14 and other related occupations listed as professional, semiprofessional, technical,
15 clerical, mechanical, and kindred occupations

16 Wage Order, § 2(O). At all relevant times during the applicable limitations period, the
17 Defendants, Flores, and all of the Class Members were covered by the Wage Order because
18 Flores and all of the Class Members worked for a caregiver recruiting company, their assistants
19 and other related occupations listed as professional, semiprofessional, technical, clerical,
20 mechanical, and kindred occupations. Accordingly, Flores and all of the other Class Members
21 are entitled to the protections the Wage Order provides.

22 19. On approximately June 15, 2020, Defendants began to employ Flores in Los
23 Angeles (remotely) in the position of hourly, non-exempt intake coordinator. In or about
24 December 2021, Defendants promoted Flores to a centralized form specialist. Flores worked
25 remotely from her home, for Defendants. Defendants continuously employed her in that capacity
26 until on or about January 3, 2023, when her employment ended.

27 20. At all relevant times, Defendants issued wages to Flores and all of the other Class
28 Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant
times, Defendants classified Flores and all of the other Class Members as non-exempt employees
entitled to the protections of the Labor Code and the Wage Order. Flores and the Class Members
often worked five (5) to six (6) days in a workweek, and between eight (8) to ten (10) hours per
workday. At all relevant times, Flores and the Class Members worked over eight (8) hours in one
workday and over forty (40) hours in one workweek.

21 21. At all relevant times, Defendants failed to provide Flores and all of the other Class
22 Members with all timely 30-minute, off-duty meal periods. Due to the workload and failure to



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1 hire sufficient staff members, Defendants denied Flores and the Class Members their 30-minute
2 off-duty meal period within the first five hours of work. At all relevant times, Flores began her
3 workday at 5:00 a.m. and Defendants informed her that she could only take her scheduled lunches
4 at 10:30 a.m. A paystub issued by Defendants to Flores, dated June 1, 2022, demonstrates that
5 eight (8) out of the (9) meal periods Flores took during that pay period, were late meal periods,
6 only permitted after the first five hours of work. On a daily basis, Defendants' managers
7 designated the times at which Flores and the Class Members were permitted to take their lunch
8 breaks. The Defendants also denied 30-minute off-duty meal periods to Flores and the Class
9 Members because they were often interrupted by Defendants who required them to complete
10 work tasks during meal breaks or to cut their meal breaks short and return to work. Defendants
11 also failed to pay premium wages for days on which they failed to provide Flores and all of the
12 other Class Members with meal periods as required by law.

12 22. At all relevant times, Defendants failed to authorize and permit Flores and all of
13 the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
14 or major portion thereof. Defendants also failed to pay premium wages for days on which they
15 failed to authorize and permit Flores and all of the other Class Members to take rest breaks as
16 required by law.

17 23. Defendants failed to pay all earned but unused vacation pay to Flores and all of
18 the other Class Members at their final rates of pay. Under the policies and practices of
19 Defendants, Flores and all of the other Class Members earned vacation pay hours during
20 employment. Under such policies, these accrued but unused forms of vacation pay were subject
21 to forfeit at the conclusion of the employment relationship.

22 24. At all relevant times, Defendants required Flores and all of the other Class
23 Members to incur certain business expenses in the course of performing their duties. Defendants
24 required Flores and all of the other Class Members to supply mobile phones to perform their job
25 duties. However, Defendants did not provide these items and did not reimburse Flores and the
26 other Class Members for these items.

27 25. At all relevant times, Defendants failed to issue to Flores and all of the other Class
28 Members complete and accurate wage statements that state all wages earned. Defendants
29 knowingly and intentionally failed to state on the wage statements they issued to Flores and all
30 of the other Class Members the unpaid wages discussed above. The wage statements fail to



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1 state all meal period premium wages earned, all rest break premium wages earned, and other
2 required information.

3 26. Defendants also failed to timely pay Flores and all of the other Class Members all
4 earned wages as described above during and at the conclusion of employment. The Employers
5 failed to issue to Flores her final paystub when her employment ended, and she has yet to receive
6 it. Defendants failed to maintain accurate employee records of Flores and all of the other Class
7 Members.

8 27. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
9 unlawful practices and policies, Plaintiff and the Class Members were:

- 10 A. Not paid all earned and unused vacation pay;
11 B. Not provided with all off duty meal periods;
12 C. Not authorized and permitted to take all rest break periods;
13 D. Not paid one hour's pay for each workday in which Defendants failed to
14 authorize and permit them to take one or more timely rest periods;
15 E. Not paid one hour's pay for each workday in which Defendants failed to
16 provide them with one or more timely meal periods;
17 F. Not indemnified for all necessary business expenditures incurred during
18 the discharge of their duties;
19 G. Not provided with accurate and complete wage statements; and
20 H. Not timely paid all earned and unpaid wages at the time their employment
21 ended.

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE 24 CORRECT RATES**

25 **Lab. Code §§ 510, 1194, 1197, and 1198**

26 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

27 28. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

28 29. At all relevant times, Plaintiff and the Class Members have been non-exempt
29 employees entitled to the protections of both the Labor Code and the Wage Order.

30. Section 2 of the Wage Order defines "hours worked" as "the time during which an



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1 employee is subject to the control of an employer, and includes all the time the employee is
2 suffered or permitted to work, whether or not required to do so.”

3 31. Section 3 of the Wage Order states:

4 (A) Daily Overtime - General Provisions

5 (1) The following overtime provisions are applicable to
6 employees 18 years of age or over and to employees 16 or
7 17 years of age who are not required by law to attend
8 school and are not otherwise prohibited by law from
9 engaging in the subject work. Such employees shall not be
10 employed more than eight (8) hours in any workday or
11 more than 40 hours in any workweek unless the employee
12 receives one and one-half (1 ½) times such employee’s
13 regular rate of pay for all hours worked over 40 hours in
14 the workweek. Eight (8) hours of labor constitutes a day’s
15 work. Employment beyond eight (8) hours in any workday
16 or more than six (6) days in any workweek is permissible
17 provided the employee is compensated for such overtime
18 at not less than:

19 (a) One and one-half (1 ½) times the employee’s
20 regular rate of pay for all hours worked in excess of
21 eight (8) hours up to and including 12 hours in any
22 workday, and for the first eight (8) hours worked on
23 the seventh (7th) consecutive day of work in a
24 workweek.

25 (b) Double the employee’s regular rate of pay for all
26 hours worked in excess of 12 hours in any workday
27 and for all hours worked in excess of eight (8) hours
28 on the seventh (7th) consecutive day of work in a
workweek.

(c) The overtime rate of compensation required to be
paid to a nonexempt full-time salaried employee
shall be computed by using the employee’s regular
hourly salary as one-fortieth (1/40) of the
employee’s weekly salary.

32. Section 4 of the Wage Order requires an employer to pay non-exempt employees
at least the minimum wage set forth therein for all hours worked, which consists of all hours that
an employer has actual or constructive knowledge that employees are working.



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1 33. Labor Code section 510 states:

2 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
3 in one workday and any work in excess of 40 hours in any one workweek and the
4 first eight hours worked on the seventh day of work in any one workweek shall be
5 compensated at the rate of no less than one and one-half times the regular rate of
6 pay for an employee. Any work in excess of 12 hours in one day shall be
7 compensated at the rate of no less than twice the regular rate of pay for an
8 employee. In addition, any work in excess of eight hours on any seventh day of a
9 workweek shall be compensated at the rate of no less than twice the regular rate of
10 pay of an employee. Nothing in this section requires an employer to combine more
11 than one rate of overtime compensation in order to calculate the amount to be paid
12 to an employee for any hour of overtime work.

13 34. Labor Code section 1194 invalidates any agreement between an employer and an
14 employee to work for less than the minimum wage required under the applicable Wage Order.

15 35. Labor Code section 1197 makes it unlawful for an employer to pay an employee
16 less than the minimum wage required under the applicable Wage Order for all hours worked
17 during a payroll period.

18 36. Labor Code section 1198 makes it unlawful for an employer to employ an
19 employee under conditions that violate the Wage Order.

20 37. In conjunction, these provisions of the Labor Code require employers to pay non-
21 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
22 worked, including unrecorded hours when the employer knew or reasonably should have known
23 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
24 Cal.4th 575, 585.)

25 38. At all relevant times during the applicable limitations period, Defendants failed to
26 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
27 minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and
28 doubletime hours, respectively, that they worked at the correct rates of pay.

39. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
rates of pay as required by California law.

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SECOND CAUSE OF ACTION
VACATION PAY FORFEITURE

Lab. Code § 227.3

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

40. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

41. Section 227.3 of the Labor Code states that, unless otherwise stipulated by a collective bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations and an employee is terminated without having fully utilized her vested vacation time, all vested vacation must be paid to the employee at her final rate in accordance with such contract of employment or employer policy respecting vacation eligibility or time served. In addition, the statute prohibits an employment contract or employer policy from providing for forfeiture of such vested vacation time upon an employee's termination of employment, regardless of the reason for termination. (See *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, [183 Cal.Rptr. 846, 646 P.2d 122 (1982)].)

42. The California Supreme Court has examined the terms under which an employee acquires a vested right to vacation benefits that is protected against forfeiture. The Supreme Court concluded that a "proportionate right to a paid vacation 'vests' as the labor is rendered." Thus, an employee is entitled to a pro rata share of vacation pay upon termination of employment even though he has not completed all of the service requirements specified in the employer's policy or plan.

43. An employer should never, by reason of the employee's termination, attempt to divest or forfeit any portion of the vacation benefits in which the employee has acquired a vested interest pursuant to the terms of the employer's policy or agreement.

44. A vacation policy that provides for the forfeiture of vacation pay that is not used by a specified date, such as an employee's anniversary date, is impermissible under California law. Courts have held that such "use-it-or-lose-it policies" result in forfeitures of vested vacation pay and thus transgress the requirements of Labor Code Section 227.3. Such policies do not permit employees to carry over vacation time from one year to the next and do not allow employees to receive vacation pay in lieu of taking vacation time off.

45. The DLSE's enforcement policy permits employers to exclude employees from a vacation policy during a specified period of time at the beginning of employment. This could



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1 apply to a probationary or introductory period or even the first year of employment. If the policy
2 is properly drafted, employees will not be entitled to prorated vacation benefits if they separate
3 from the employer for any reason during the probationary period or “initial employment.”
4 (D.L.S.E. Operations and Procedures Manual § 7(a).) However, such an exclusion will be
5 recognized only if it is not found to be a “subterfuge.” The Division will deem a subterfuge to
6 exist if vacation benefits are implicitly earned or accrued during the waiting period. For example,
7 if a policy provides that employees do not earn any vacation during their first year of employment,
8 but earn four weeks’ vacation during the second year and are reduced to two weeks’ vacation the
9 third year, the Division will contend that the policy involves a subterfuge. This is based on the
10 Division’s position that the policy, when viewed as a whole, makes it clear that two of the four
11 weeks’ vacation attributed to the second year are actually earned in the first years. In a case where
12 such a subterfuge is found, employees who separate during the so-called “waiting period” (i.e.,
13 the first year of employment in the example) will be entitled to prorated vacation pay.

14 46. The Division takes the position that vacation pay for a terminating employee must
15 be prorated on a daily basis and must be paid at the final rate of pay in effect as of the date of the
16 separation. (See D.L.S.E. Operations and Procedures Manual § 8; D.L.S.E. Enforcement Policies
17 and Interpretations Manual § 13.3 (1998); Letter of Chief Deputy Labor Commissioner Albert J.
18 Reyff (Oct. 28, 1986).)

19 47. The Defendants maintained vacation pay policies and practices with accrual
20 components that violate Labor Code § 227.3 based on the California Supreme Court’s decision
21 in *Suastez v. Plastic Dress-Up Co.*, supra. The Defendants’ vacation policy fails to provide for
22 proportionate vacation pay accruals as employees render labor and causes employees to forfeit
23 their vested rights to vacation pay. Under the policies and practices of the Defendants, Flores and
24 all of the other Class Members earned vacation pay during employment. Under such policies,
25 these accrued but unused forms of vacation pay were subject to forfeit at the conclusion of the
26 employment relationship. Consequently, the Class Members are entitled to recover vacation pay.

27 48. In *Suastez*, the defendant-employer “refused to pay vacation benefits to anyone
28 whose employment was terminated before . . . [his or her employment] anniversary date” and
refused to pay the plaintiff-employee a pro rata share of his vacation pay for the time period
between his last employment anniversary date and his termination date. (*Id.* at 776–77.) In finding
for the plaintiff-employee, the Court held that “a proportionate right to a paid vacation ‘vests’ as



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the labor is rendered” and that Labor Code § 227.3 protects that right from forfeiture. (*Id.* at 784.)

49. It is especially worth noting that, in rejecting the contention that the plaintiff-employee had no vested right to vacation pay until his anniversary date, the Court specifically stated: “The right to some share of vacation pay vests, like pension rights, on acceptance of employment. Nonperformance of a condition subsequent, such as [defendant-employer’s] requirement that employees remain until their anniversary, can, at most, result in a forfeiture of the right to a vacation; *it cannot prevent that right from vesting.*” (*Id.* at 780–81, (italics added).)

50. Like the vacation pay policy the Court rejected in *Suastez*, the Defendants’ vacation pay policies also fail to provide for proportionate accruals.

51. Defendants did not pay Plaintiff or the Class Members at the time they were terminated for any unused but accrued vacation days and the like. Defendants had the ability to provide Plaintiff and the Class Members payment for their accrued but unused vacation days and similar compensation but intentionally failed to pay Plaintiff and the Class Members.

52. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’ failure to pay Plaintiff and the other Class Members vacation wages as required by California law.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

Lab. Code §§ 226.7 and 512

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

53. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

54. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

55. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

56. In relevant part, In relevant part, California Labor Code § 512 states:



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1 An employer shall not employ an employee for a work period of
2 more than five hours per day without providing the employee with
3 a meal period of not less than 30 minutes, except that if the total
4 work period per day of the employee is no more than six hours, the
5 meal period may be waived by mutual consent of both the
6 employer and employee.

7 An employer shall not employ an employee for a work period of
8 more than 10 hours per day without providing the employee with
9 a second meal period of not less than 30 minutes, except that if the
10 total hours worked is no more than 12 hours, the second meal
11 period may be waived by mutual consent of the employer and the
12 employee only if the first meal period was not waived.

13 57. In relevant part, Section 11 of the Wage Order states:

14 **Meal Periods**

15 (A) No employer shall employ any person for a work period of more
16 than five (5) hours without a meal period of not less than 30
17 minutes, except that when a work period of not more than six (6)
18 hours will complete the day's work the meal period may be waived
19 by mutual consent of the employer and the employee. Unless the
20 employee is relieved of all duty during a 30 minute meal period,
21 the meal period shall be considered an "on duty" meal period and
22 counted as time worked. . . .

23 (B) If an employer fails to provide an employee a meal period in
24 accordance with the applicable provisions of this Order, the
25 employer shall pay the employee one (1) hour of pay at the
26 employee's regular rate of compensation for each workday that the
27 meal period is not provided.

28 58. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during
a meal or rest period mandated pursuant to an applicable
statute, or applicable regulation, standard, or order of the
Industrial Welfare Commission, the Occupational Safety
and Health Standards Board, or the Division of
Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period
or rest period in accordance with a state law, including, but



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not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

59. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

60. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order.

61. At all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods.

62. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Class Members with all off-duty meal periods required by California law.

63. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all meal periods not provided to them.

64. By reason of the above, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more meal periods were not provided to them pursuant to California Labor Code § 226.7.

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FOURTH CAUSE OF ACTION
FAILURE TO AUTHORIZE AND PERMIT REST BREAKS
Lab. Code § 226.7

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

65. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

66. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7 and 1198, and the Wage Order.

67. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

68. In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

69. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the



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Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

70. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

71. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order.

72. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed to authorize and permit them to take 10-minute rest periods every four hours worked or major fraction thereof.

73. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class Members with additional wages for all rest breaks not provided to them as required by California Labor Code § 226.7.

74. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in amounts subject to proof to the extent they were not paid additional wages



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owed for all rest breaks not provided to them.

75. By reason of the above, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more rest breaks were not provided to them pursuant to California Labor Code § 226.7.

FIFTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

Lab. Code § 2802

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

76. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

77. In pertinent part, California Labor Code § 2802(a) states: “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

78. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

79. At all relevant times, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties.

80. As described above, the Defendants required Flores and all of the other Class Members to incur certain business expenses in the course of performing their duties. Defendants required Flores and all of the other Class Members to supply mobile phones to perform their job duties. However, Defendants did not provide these items and did not reimburse Flores and the other Class Members for these items.

81. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’ failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred during the course of performing their duties.

SIXTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WRITTEN WAGE

STATEMENTS

Lab. Code § 226

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

82. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.



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1 83. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
2 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
3 statement showing:

- 4 A. Gross wages earned;
- 5 B. Total hours worked by the employee, except for any employee whose
6 compensation is solely based on a salary and who is exempt from payment of overtime under
7 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 8 C. The number of piece rate units earned and any applicable piece rate if the
9 employee is paid on a piece-rate basis;
- 10 D. All deductions, provided that all deductions made on written orders of the
11 Employee may be aggregated and shown as one item;
- 12 E. Net wages earned;
- 13 F. The inclusive dates of the period for which the employee is paid;
- 14 G. The name of the employee and his or her social security number, except
15 that by January 1, 2008, only the last four digits of his or her social security number or an
16 employee identification number other than a social security number may be shown on the itemized
17 statement;
- 18 H. The name and address of the legal entity that is the employer; and
- 19 I. All applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee.

21 84. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
22 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
23 the employer fails to provide accurate and complete information as required by California Labor
24 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
25 alone one or more of the following:

- 26 A. The amount of the gross wages or net wages paid to the employee during
27 the pay period or any of the other information required to be provided on the itemized wage
28 statement pursuant to California Labor Code § 226(a);
- B. Which deductions the employer made from gross wages to determine the
net wages paid to the employee during the pay period;
- C. The name and address of the employer and, if the employer is a farm labor



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contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name and address of the legal entity that secured the services of the employer during the pay period;

D. The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; and

E. The number of piece-rate units earned and the piece rate.

85. “Promptly and easily determine,” as stated in California Labor Code § 226(e), means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

86. As alleged herein, at all relevant times during the applicable limitations period, Defendants violated California Labor Code section 226 because they did not properly and accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Defendants failed to state in the wage statements they issued to Plaintiff and the other Class Members all their hours worked and wages earned, including, but not limited to, all meal period premium wages earned, all rest break premium wages earned, and other required information.

87. Defendants’ failure to provide Plaintiff and the other Class Members with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the other Class Members with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

88. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants’ unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the other Class Members were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code section 226(a).

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SEVENTH CAUSE OF ACTION
WILLFUL FAILURE TO TIMELY PAY FINAL WAGES
(Lab. Code §§ 201, 202, and 203)

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

89. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

90. At all relevant times during the applicable limitations period, Plaintiffs and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201, 202, and 203, and the Wage Order.

91. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

92. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

93. The Defendants failed to pay Flores and all of the other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Flores, including all meal period premium wages earned, all rest break premium wages earned, and other compensation. Additionally, Defendants failed to issue to Flores and all of the other Class Members whose employment ended their final paychecks.

94. By failing to pay such earned wages to Plaintiff and the Class Members, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

95. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Class Members all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

96. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

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EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, *et seq.*)

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

97. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

98. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, *et seq.*

99. The unlawful conduct of Defendants alleged herein amount to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to compensate employees for all earned wages.

100. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class Members were deprived of all meal period premium wages earned, all rest break premium wages earned, vacation pay, and comparable money and property.

101. Pursuant to California Business & Professions Code § 17203, Plaintiff and the Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

102. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

NINTH CAUSE OF ACTION

CIVIL PENALTIES

Lab. Code §§ 2698, *et seq.*

**(Plaintiff, on behalf of herself, the Aggrieved Employees, and the State of California,
against all Defendants)**

103. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

104. The "Aggrieved Employees" are all members of the Class defined above who



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1 Defendants employed during the period beginning September 11, 2022, and ending on the date
2 that final judgment is entered in this action.

3 105. Labor Code § 204 states:

4 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
5 or 204.2, earned by any person in any employment are due and payable twice
6 during each calendar month, on days designated in advance by the employer as the
7 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any
8 calendar month shall be paid for between the 16th and the 26th day of the month
9 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. ...

10 (b) (1) Notwithstanding any other provision of this section, all wages
11 earned for labor in excess of the normal work period shall be paid
12 no later than the payday for the next regular payroll period.

13 (2) An employer is in compliance with the requirements of subdivision
14 (a) of Section 226 relating to total hours worked by the employee,
15 if hours worked in excess of the normal work period during
16 the current pay period are itemized as corrections on the
17 paystub for the next regular pay period. Any corrections set
18 out in a subsequently issued paystub shall state the inclusive
dates of the pay period for which the employer is correcting its
initial report of hours worked.

19 (c) However, when employees are covered by a collective bargaining
20 agreement that provides different pay arrangements, those arrangements shall
21 apply to the covered employees.

22 (d) The requirements of this section shall be deemed satisfied by the payment
23 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
24 more than seven calendar days following the close of the payroll period.

25 106. Defendants paid wages to employees on regular intervals. Defendants, however,
26 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information
27 and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
28 intervals for all wages earned and all hours worked.

107. During the applicable time period, Defendants violated California Labor Code §§



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201, 202, 203, 204, 226, 226.7, 227.3, 512, 1174, 1198, and 2802.

108. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

109. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 227.3, 512, 1174, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful, or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code § 512, fifty dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established by California Labor Code § 558).

D. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by California Labor Code § 1174.5).

E. For violations of California Labor Code §§ 201, 202, 203, 226.7, 227.3, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

110. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letters dated September 11, 2023 and March 11, 2025, Plaintiff filed written notice online with the Labor and Workforce Development Agency ("LWDA") and gave



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1 written notice by certified mail to Defendants of the specific provisions of the California Labor
2 Code alleged to have been violated, including the facts and theories to support the alleged
3 violations. True and correct copies of the notices to the LWDA dated September 11, 2023 and
4 March 11, 2025 are attached collectively as **Exhibit A**. Plaintiff submitted her LWDA notices
5 with a fee in the amount of \$75.00. The LWDA has failed to take action in response within 65
6 calendar days of the date of Plaintiff's notices, but Plaintiff anticipates that the LWDA will
7 provide written notice to Plaintiff informing him that it does not intend to investigate these
8 allegations.

9 111. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
10 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
11 connection with their claims for civil penalties.

12 **V. PRAYER FOR RELIEF**

13 112. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for
14 relief and judgment against Defendants as follows:

15 A. An order that the action be certified as a class action with respect to
16 Plaintiff's claims for violations of California law;

17 B. An order that Plaintiff be appointed class representative;

18 C. An order that counsel for Plaintiff be appointed class counsel;

19 D. Unpaid wages;

20 E. Unpaid vacation, missed meal period, and missed rest period wages;

21 F. Civil penalties;

22 G. Liquidated damages;

23 H. Statutory penalties, including waiting time penalties;

24 I. Restitution;

25 J. Declaratory relief;

26 K. Actual damages;

27 L. Pre-judgment interest;

28 M. Costs of suit;

N. Reasonable attorneys' fees; and

O. Such other relief as the Court deems just and proper.

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Respectfully submitted,

Dated: March 12, 2025

DAVID G. SPIVAK, Attorney for
Plaintiff, STEPHANIE FLORES, and
all others similarly situated

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 1875 Century Park East Fl 7 Los Angeles CA 90067.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On March 12, 2025, I served the foregoing document described as **[PROPOSED] SECOND AMENDED COMPLAINT** with the third-party cloud service listed below. In doing so, notifications of such filings were electronically mailed to the interested parties which appear on the third-party cloud service's service list in this action as follows:

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Jackson Lewis P.C.
725 South Figueroa Street
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Jennell K. Shannon, Esq.
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XXXX (BY ELECTRONIC SERVICE) Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service **CASE ANYWHERE**.

EXECUTED on March 12, 2025, at Riverside, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



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