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County of Sonoma
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Attorneys for Plaintiff SHARON ELIZABETH HERBERT,
on behalf of herself and all others similarly situated

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

SHARON ELIZABETH HERBERT, on
behalf of herself and all others similarly
situated,

Plaintiffs,

v.

FRIEDMAN'S HOME IMPROVEMENT,
a California corporation; and DOES 1 to
10, inclusive,

Defendants.

CLASS ACTION

Case No. 23CV01246

1. **FAILURE TO PAY ALL WAGES;**
2. **FAILURE TO PROVIDE ALL MEAL PERIODS;**
3. **FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS;**
4. **FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS;**
5. **DERIVATIVE VIOLATIONS OF LABOR CODE §§ 201-202;**
6. **INDEPENDENT VIOLATIONS OF LABOR CODE §§ 201-202; AND**
7. **UNFAIR BUSINESS PRACTICES**

DEMAND FOR JURY TRIAL

Plaintiff SHARON ELIZABETH HERBERT, an individual on behalf of herself and all others similarly situated (collectively referred to as "Plaintiffs"), hereby files this Complaint against Defendant FRIEDMAN'S HOME IMPROVEMENT, and DOES 1 to 10 (collectively referred to as "Defendants"). Plaintiffs are informed and believe, and on the basis of that information and belief, allege as follows:

I.

INTRODUCTION

1. This is a civil action seeking recovery for Defendants' violations of the California Labor Code, California Business and Professions Code, the applicable Wage Orders issued by

1 the California Industrial Welfare Commission (the "IWC Wage Orders") and related common law
2 principles.

3 2. Plaintiffs' action seeks monetary damages including full restitution from
4 Defendants as a result of Defendants' unlawful, fraudulent, and/or unfair business practices.

5 3. The acts complained of herein occurred, occur and will occur, at least in part,
6 within the time period from four years preceding the filing of the original Complaint herein, plus
7 179 days under Cal. Rules of Court, Appendix I, Emergency Rule No. 9, up to and through the
8 time of trial for this matter although this should not automatically be considered the statute of
9 limitations for any cause of action herein.

10 RELEVANT JOB TITLES

11 4. For introductory and general information only (and not to be considered a
12 proposed class definition), the relevant job titles held by the California citizens in this action are
13 Defendants' non-exempt employees who were subjected to Defendants' policies and practices as
14 described herein. Any differences in job activities between the different individuals in these
15 positions were and are legally insignificant to the issues presented by this action.

16 SUMMARY OF CLAIMS

17 5. With regard to Defendants' non-exempt employees Defendants have:

- 18 a. Failed to pay straight time, minimum, and/or overtime wages for all hours
19 worked;
- 20 b. Failed to provide all legally-required meal periods;
- 21 c. Failed to authorize and permit all paid rest periods;
- 22 d. Failed to timely furnish accurate itemized wage statements;
- 23 e. Derivatively Violated Labor Code §§ 201-202;
- 24 f. Independently Violated Labor Code §§ 201-202;
- 25 g. Conducted unfair business practices.

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1 11. Plaintiffs do not know the true names or capacities, whether individual, partner or
2 corporate, of DOES 1 to 10, inclusive and for that reason, DOES 1 to 10 are sued under such
3 fictitious names under California Code of Civil Procedure § 474.

4 12. Plaintiffs will seek leave of court to amend this Complaint to allege such names and
5 capacities as soon as they are ascertained.

6 ALL DEFENDANTS

7 13. Defendants, and each of them, are now and/or at all times mentioned in this
8 Complaint were in some manner legally responsible for the events, happenings, and circumstances
9 alleged in this Complaint.

10 14. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful
11 practices, wrongs, complaints, injuries, and/or damages alleged in this Complaint.

12 15. Defendants, and each of them, are now and/or at all times mentioned in this
13 Complaint were the agents, servants, and/or employees of some or all other Defendants, and
14 vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all
15 times mentioned in this Complaint were acting within the course and scope of that agency,
16 servitude, and/or employment.

17 16. Defendants, and each of them, are now and/or at all times mentioned in this
18 Complaint were members of and/or engaged in a joint venture, partnership, and common
19 enterprise, and were acting within the course and scope and in pursuance of said joint venture,
20 partnership, and common enterprise.

21 17. Defendants, and each of them, at all times mentioned in this Complaint concurred
22 and contributed to the various acts and omissions of each and every one of the other Defendants
23 in proximately causing the complaints, injuries, and/or damages alleged in this Complaint.

24 18. Defendants, and each of them, at all times mentioned in this Complaint approved
25 of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in
26 this Complaint.

27 19. Defendants, and each of them, at all times mentioned in this Complaint aided and
28 abetted the acts and omissions of each and every one of the other Defendants thereby

1 proximately causing the damages alleged in this Complaint.

2 **III.**

3 **JURISDICTION AND VENUE**

4 20. The California Superior Court has jurisdiction in this matter due to Defendants'
5 aforementioned violations of California statutory law and/or related common law principles.

6 21. The California Superior Court also has jurisdiction in this matter because both the
7 individual and aggregate monetary damages and restitution sought herein exceed the minimal
8 jurisdictional limits of the Superior Court and will be established at trial, according to proof.

9 22. The California Superior Court also has jurisdiction in this matter because during
10 their employment with Defendants, Plaintiff SHARON ELIZABETH HERBERT and the members
11 of the putative Classes herein were all California citizens and Defendant FRIEDMAN'S HOME
12 IMPROVEMENT, is a California corporation. Further, there is no federal question at issue, as the
13 issues herein are based solely on California statutes and law.

14 23. Venue is proper in Sonoma County under Code of Civil Procedure § 395(a) and
15 Code of Civil Procedure § 395.5 in that liability arose there because at least some of the
16 transactions that are the subject matter of this Complaint occurred therein and/or each Defendant
17 either is found, maintains offices, transacts business, and/or has an agent therein.

18 **IV.**

19 **CLASS ACTION ALLEGATIONS**

20 24. Code of Civil Procedure § 382 provides in pertinent part, "[W]hen the question is
21 one of a common or general interest, of many persons, or when the parties are numerous, and it
22 is impracticable to bring them all before the court, one or more may sue or defend for the benefit
23 of all." Plaintiffs bring this suit as a class action under Code of Civil Procedure § 382.

24 25. The putative classes Plaintiffs will seek to certify are currently composed of and
25 defined as follows:

- 26 a. All California citizens employed by Defendants as non-exempt employees
27 during the appropriate time period who were subjected to Defendants' policies
28 and practices regarding the payment of straight time, minimum and/or

overtime wages as specifically described herein (hereinafter, the “Wage Class”);

b. All California citizens employed by Defendants as non-exempt employees during the appropriate time period who were subjected to Defendants’ policies and practices regarding meal periods as specifically described herein (hereinafter, the “Meal Period Class”);

c. All California citizens employed by Defendants as non-exempt employees during the appropriate time period who were subjected to Defendants’ policies and practices regarding paid rest periods and on-premise rest periods as specifically described herein (hereinafter, the “Rest Period Class”);

d. All California citizens employed by Defendants as non-exempt employees during the appropriate time period who were subjected to Defendants’ policies and practices regarding itemized wage statements as specifically described herein (hereinafter, the “Wage Statement Class”);

e. All formerly-employed California citizens employed by Defendants as non-exempt employees during the appropriate time period who were derivatively subjected to Defendants’ policies and practices regarding Labor Code § 203 and the payment of final wages as specifically described herein (hereinafter, the “Derivative LC 203 Class”); and

f. All formerly-employed California citizens employed by Defendants as non-exempt employees during the appropriate time period who were independently subjected to Defendants’ policies and practices regarding Labor Code § 203 and the payment of final wages as specifically described herein (hereinafter, the “Independent LC 203 Class”); and

g. All California citizens employed by Defendants as non-exempt employees during the appropriate time period regarding whom Defendants have engaged in unlawful, unfair and/or fraudulent business acts or practices prohibited by Business & Professions Code §§ 17200, et seq. as specifically described

herein (hereinafter, the “17200 Class”).

26. The Wage Class, Meal Period Class, Rest Period Class, Wage Statement Class, Derivative LC 203 Class, Independent LC 203 Class, and 17200 Class are herein collectively referred to as the “Classes.”

27. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or necessary to amend the definition of the Classes. Plaintiffs will formally define and designate a class definition at such time when Plaintiffs seek to certify the Classes alleged herein.

28. Numerosity (Code of Civil Procedure § 382):

- a. The potential quantity of members of the Classes as defined is so numerous that joinder of all members is unfeasible and impractical;
- b. The disposition of the claims of the members of the Classes through this class action will benefit both the parties and this Court;
- c. The quantity of members of the Classes is unknown to Plaintiffs at this time; however, it is estimated that the membership of the Classes numbers greater than 100 individuals; and
- d. The quantity and identity of such membership is readily ascertainable via inspection of Defendants’ records.

29. Superiority (Code of Civil Procedure § 382): The nature of this action and the nature of the laws available to Plaintiffs make the use of the class action format particularly efficient and the appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein, as follows:

- a. California has a public policy that encourages the use of the class action device;
- b. By establishing a technique whereby the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation;

- 1 c. This case involves large corporate Defendants and a large number of
2 individual Class members with many relatively small claims and common
3 issues of law and fact;
- 4 d. If each individual member of the Classes was required to file an individual
5 lawsuit, the large corporate Defendants would necessarily gain an
6 unconscionable advantage because Defendants would be able to exploit and
7 overwhelm the limited resources of each individual member of the Classes
8 with Defendants' vastly superior financial and legal resources;
- 9 e. Requiring each individual member of the Classes to pursue an individual
10 remedy would also discourage the assertion of lawful claims by the members
11 of the Classes who would be disinclined to pursue an action against
12 Defendants because of an appreciable and justifiable fear of retaliation and
13 permanent damage to their lives, careers, and well-being;
- 14 f. Proof of a common business practice or factual pattern, of which the members
15 of the Classes experienced, is representative of the Classes herein and will
16 establish the right of each of the members of the Classes to recover on the
17 causes of action alleged herein;
- 18 g. Absent class treatment, the prosecution of separate actions by the individual
19 members of the Classes, even if possible, would likely create:
- 20 i) a substantial risk of each individual plaintiff presenting in separate,
21 duplicative proceedings the same or essentially similar arguments and
22 evidence, including expert testimony;
- 23 ii) a multiplicity of trials conducted at enormous expense to both the judicial
24 system and the litigants;
- 25 iii) inconsistent or varying verdicts or adjudications with respect to the
26 individual members of the Classes against Defendants;
- 27 iv) potentially incompatible standards of conduct for Defendants; and
28 v) potentially incompatible legal determinations with respect to individual

1 members of the Classes which would, as a practical matter, be dispositive
2 of the interest of the other members of the Classes who are not parties to
3 the adjudications or which would substantially impair or impede the
4 ability of the members of the Classes to protect their interests.

5 h. The claims of the individual members of the Classes are not sufficiently large
6 to warrant vigorous individual prosecution considering all of the concomitant
7 costs and expenses attendant thereto;

8 i. Courts seeking to preserve efficiency and other benefits of class actions
9 routinely fashion methods to manage any individual questions; and

10 j. The Supreme Court of California urges trial courts, which have an obligation
11 to consider the use of innovative procedural tools to certify a manageable
12 class, to be procedurally innovative in managing class actions.

13 30. Well-defined Community of Interest: Plaintiffs also meet the established
14 standards for class certification, as follows:

15 a. Typicality: The claims of Plaintiff SHARON ELIZABETH HERBERT are
16 typical of the claims of all members of the Classes she seeks to represent
17 because all members of the Classes sustained injuries and damages arising out
18 of Defendants' common course of conduct in violation of law and the injuries
19 and damages of all members of the Classes were caused by Defendants'
20 wrongful conduct in violation of law, as alleged herein.

21 b. Adequacy: Plaintiff SHARON ELIZABETH HERBERT:

- 22 i) is an adequate representative of the Classes she seeks to represent;
23 ii) will fairly protect the interests of the members of the Classes;
24 iii) has no interests antagonistic to the members of the Classes; and
25 iv) will vigorously pursue this suit via attorneys who are competent, skilled
26 and experienced in litigating matters of this type.

27 c. Predominant Common Questions of Law or Fact: There are common
28 questions of law and/or fact as to the members of the Classes which

predominate over questions affecting only individual members of the Classes, including, without limitation:

- i) Whether Defendants paid the legal and appropriate straight time pay, minimum wage pay and/or overtime pay for all work hours to the members of the Wage Class;
- ii) Whether Defendants failed and continue to fail to provide legally-required meal periods to the members of the Meal Period Class in violation of the Labor Code and Section 11 of the IWC Wage Orders;
- iii) Whether Defendants failed and continue to fail to authorize and permit paid legally-required rest periods to the members of the Rest Period Class in violation of the Labor Code and Section 12 of the IWC Wage Orders;
- iv) Whether Defendants failed to timely furnish accurate, itemized and legal wage statements to the members of the Wage Statement Class;
- v) Whether Defendants are liable under Labor Code § 203 to the members of the Derivative LC 203 Class;
- vi) Whether Defendants are liable under Labor Code § 203 to the members of the Independent LC 203 Class;
- vii) Whether Defendants' conduct constitutes unfair competition within the meaning of Business & Professions Code §§ 17200, et seq.;
- viii) Whether the members of the Classes are entitled to compensatory damages, and if so, the means of measuring such damages;
- ix) Whether the members of the Classes are entitled to injunctive relief;
- x) Whether the members of the Classes are entitled to restitution; and
- xi) Whether Defendants are liable for attorneys' fees and costs.

31. Whether each member of the Classes might be required to ultimately justify an individual claim does not preclude maintenance of a class action.

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V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES

(On Behalf of the Wage Class)

(Against All Defendants)

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

33. Labor Code § 204 establishes the fundamental right of all employees in the State of California to be paid wages, including straight time and overtime, in a timely fashion for their work.

34. Labor Code § 510(a) states in pertinent part, "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee."

35. Labor Code § 1182.12, effective July 1, 2014, states, "Notwithstanding any other provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars (\$9) per hour, and on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour." Further, under Labor Code § 1182.12(b)(1)(A), for any employer who employs 26 or more employees, the minimum wage shall be as follows: "From January 1, 2017, to December 31, 2017, inclusive, - ten dollars and fifty cents (\$10.50) per hour." Under Labor Code § 1182.12(b)(1)(B), for any employer who employs 26 or more employees, the minimum wage shall be as follows: "From January 1, 2018, to December 31, 2018, inclusive, - eleven dollars (\$11) per hour." Under Labor Code § 1182.12(b)(1)(C), for any employer who employs 26 or more employees, the minimum wage shall be as follows: "From January 1, 2019, to December 31, 2019, inclusive, - twelve dollars (\$12) per hour." Under Labor Code § 1182.12(b)(1)(D), for any employer who employs 26 or

1 more employees, the minimum wage shall be as follows: "From January 1, 2020, to December
2 31, 2020, inclusive, - thirteen dollars (\$13) per hour." Under Labor Code § 1182.12(b)(1)(E), for
3 any employer who employs 26 or more employees, the minimum wage shall be as follows:
4 "From January 1, 2021, to December 31, 2021, inclusive, - fourteen dollars (\$14) per hour."
5 Finally, under Labor Code § 1182.12(b)(1)(F), for any employer who employs 26 or more
6 employees, the minimum wage shall be as follows: "From January 1, 2022, and until adjusted by
7 subdivision (c) - fifteen dollars (\$15) per hour."

8 36. Labor Code § 1194(a) states, "Notwithstanding any agreement to work for a
9 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
10 compensation applicable to the employee is entitled to recover in a civil action the unpaid
11 balance of the full amount of this minimum wage or overtime compensation, including interest
12 thereon, reasonable attorney's fees, and costs of suit."

13 37. Further, under Labor Code § 1197, payment of less than the minimum wage fixed
14 by the Labor Commission is unlawful.

15 38. Under Labor Code § 1198, it is unlawful to employ persons for longer than the
16 hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC
17 Wage Order(s).

18 39. Under the IWC Wage Order(s), Defendants are required to pay the members of
19 the Wage Class for all hours worked, meaning the time during which an employee is subject to
20 the control of an employer, including all the time the employee is suffered or permitted to work,
21 whether or not required to do so.

22 40. Defendants, as a matter of established company policy and procedure, at each and
23 every one of the individual facilities owned and/or operated by Defendants, consistently:

- 24 a. Administered a uniform company policy and practice as to the pay policies
25 regarding the members of the Wage Class;
- 26 b. Required the members of the Wage Class to spend unpaid time under
27 Defendants' control for work-related tasks without compensation. For
28 example:

- Defendants required the members of the Wage Class, before clocking in, to perform pre-shift work-related activities such as assisting customers as they entered the store and/or in the parking lot;
- Defendants required the members of the Wage Class, before clocking in, to wait in line at the timeclock;
- Defendants required the members of the Wage Class, after clocking out, to perform post-shift work-related activities such as assisting customers as they left the store and/or in the parking lot; and/or
- Defendants required the members of the Wage Class, while off the clock, to read and/or watch training/orientation manuals and videos.

c. As such, Defendants suffered, permitted, and/or required the members of the Wage Class to work without paying for all time they were under Defendants' control.

41. Because Defendants required the members of the Wage Class to remain under Defendants' control without paying therefore, this resulted in the members of the Wage Class earning less than the legal minimum wage in the State of California.

42. Defendants' pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement, under Labor Code § 218, to recovery by Plaintiffs and the members of the Wage Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at the appropriate rate.

43. Further, Defendants' pattern and practice in uniform administration of corporate policy regarding Defendants' failure to pay the legal minimum wage to the members of the Wage Class as described herein is unlawful and creates entitlement, under Labor Code § 1194(a), to recovery by the members of the Wage Class, in a civil action, for the unpaid balance of the full amount of the unpaid minimum wages owed, calculated as the difference between the straight time compensation paid and the applicable minimum wage, including interest thereon.

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1 44. Under Labor Code § 1194.2(a) (which provides that in any action under Labor
2 Code § 1194, an employee shall be entitled to recover liquidated damages), the members of the
3 Wage Class seek recovery of liquidated damages on the straight-time portion of uncompensated
4 hours of work (not including the overtime portion thereof) in an amount equal to the wages
5 unlawfully unpaid and interest thereon.

6 45. That calculation of individual damages for the members of the Wage Class may at
7 some point be required does not foreclose the possibility of taking common evidence on
8 questions regarding their entitlement to overtime compensation.

9 46. Under Labor Code §§ 218.6 and 1194(a) and Civil Code § 3287, the members of
10 the Wage Class seek recovery of pre-judgment interest on all amounts recovered herein.

11 47. Under Labor Code §§ 218.5 and/or 1194, the members of the Wage Class request
12 that the Court award reasonable attorneys' fees and costs incurred by them in this action.

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PROVIDE ALL MEAL PERIODS**

15 **(On Behalf of the Meal Period Class)**

16 **(Against All Defendants)**

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

20 53. Labor Code § 226.7(b) provides that "An employer shall not require an employee
21 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
22 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
23 Safety and Health Standards Board, or the Division of Occupational Safety and Health."

24 54. Labor Code § 512 provides that "An employer may not employ an employee for a
25 work period of more than five hours per day without providing the employee with a meal period
26 of not less than 30 minutes, except that if the total work period per day of the employee is no
27 more than six hours, the meal period may be waived by mutual consent of both the employer and
28 employee. An employer may not employ an employee for a work period of more than 10 hours

1 per day without providing the employee with a second meal period of not less than 30 minutes,
2 except that if the total hours worked is no more than 12 hours, the second meal period may be
3 waived by mutual consent of the employer and the employee only if the first meal period was not
4 waived.”

5 55. Labor Code § 516 provides that the Industrial Welfare Commission “may adopt or
6 amend working condition orders with respect to break periods, meal periods, and days of rest for
7 any workers in California consistent with the health and welfare of those workers.”

8 56. Section 11(C) of the IWC Wage Orders provides “Unless the employee is relieved
9 of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal
10 period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the
11 nature of the work prevents an employee from being relieved of all duty and when by written
12 agreement between the parties an on-the-job paid meal period is agreed to. The written
13 agreement shall state that the employee may, in writing, revoke the agreement at any time.”

14 57. Section 11(D) of the IWC Wage Order(s) provides “If an employer fails to
15 provide an employee a meal period in accordance with the applicable provisions of this order, the
16 employer shall pay the employee 1 hour of pay at the employee’s regular rate of compensation
17 for each workday that the meal period is not provided.”

18 58. On one or more occasions, the members of the Meal Period Class worked over
19 five hours per shift and therefore were entitled to an uninterrupted meal period of not less than
20 30 minutes prior to exceeding five hours of employment.

21 59. Further, on one or more occasions, some members of the Meal Period Class
22 worked over 10 hours per shift and therefore were entitled to an uninterrupted second meal
23 period of not less than 30 minutes prior to exceeding 10 hours of employment.

24 60. The members of the Meal Period Class did not validly or legally waive their meal
25 periods, by mutual consent with Defendants or otherwise.

26 61. The members of the Meal Period Class did not enter into any written agreement
27 with Defendants agreeing to an on-duty paid meal period.

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1 62. As a matter of Defendants' established company policy, Defendants failed to
2 always comply with the meal period requirements established by Labor Code §§ 226.7, 512,
3 and 516, and Section 11 of the IWC Wage Order(s) by failing to always provide the
4 members of the Meal Period Class with a first and in some cases a second legally compliant meal
5 period.

6 63. Under Section 11(D) of the IWC Wage Order(s) and Labor Code § 226.7(c)
7 which states, "If an employer fails to provide an employee a meal or rest or recovery period in
8 accordance with a state law, including, but not limited to, an applicable statute or applicable
9 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
10 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
11 pay the employee one additional hour of pay at the employee's regular rate of compensation for
12 each workday that the meal or rest or recovery period is not provided.," the members of the Meal
13 Period Class are entitled to damages in an amount equal to one (1) additional hour of pay at each
14 employee's regular rate of compensation for each work day that the meal period was not
15 provided, in a sum to be proven at trial.

16 64. Under Labor Code § 218.6 and Civil Code § 3287, the members of the Meal
17 Period Class seek recovery of pre-judgment interest on all amounts recovered herein.

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS**

20 **(On Behalf of the Rest Period Class)**

21 **(Against All Defendants)**

22 65. Plaintiffs incorporate by reference and reallege each and every one of the
23 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
24 forth herein.

25 66. Labor Code § 226.7(b) provides, "An employer shall not require an employee to
26 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
27 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
28 Safety and Health Standards Board, or the Division of Occupational Safety and Health."

1 67. Labor Code § 516 provides that the Industrial Welfare Commission “may adopt or
2 amend working condition orders with respect to break periods, meal periods, and days of rest for
3 any workers in California consistent with the health and welfare of those workers.”

4 68. Section 12(A) of the IWC Wage Order(s) states, “Every employer shall authorize
5 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
6 of each work period. The authorized rest period time shall be based on the total hours worked
7 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
8 However, a rest period need not be authorized for employees whose total daily work time is less
9 than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
10 worked for which there shall be no deduction from wages.”

11 69. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269, the
12 California Supreme Court held that “during rest periods employers must relieve employees of all
13 duties and relinquish control over how employees spend their time.” The court further held that a
14 policy that “tethered by time and policy to particular locations” is inconsistent with the required
15 relinquishment of control. (*Ibid.*) The court noted that employees must be free to “[take
16 a] brief walk,” or “take care of other personal matters ...like pumping breast milk ...or
17 completing a phone call to arrange child care.” (*Id.* at p. 270.)

18 70. Section 12(B) of the IWC Wage Order(s) states, “If an employer fails to provide
19 an employee a rest period in accordance with the applicable provisions of this order, the
20 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
21 compensation for each workday that the rest period is not provided.”

22 71. The members of the Rest Period Class sometimes worked over four hours per
23 shift. Further, the members of the Rest Period Class sometimes worked over six hours per shift
24 and in some cases over 10 hours per shift.

25 72. The members of the Rest Period Class were entitled to a rest period of not less
26 than 10 minutes for every four hours of work or major fraction thereof.

27 73. As a matter of Defendants’ established company policy, Defendants failed to
28 always authorize and permit legally-compliant rest periods. Defendants did not authorize and

1 permit rest periods for shifts every four hours or major fraction thereof, failed to relinquish
2 control over how employees spent their break time due to a policy that states in pertinent part
3 "Do not leave the premises during your rest period...", required the members of the Rest Period
4 Class to carry walkie talkies, prevented the members of the Rest Period Class from taking
5 uninterrupted rest periods, and/or exerted coercion against the taking of legally protected breaks
6 by using Defendants' rest period policy to prevent the members of the Rest Period Class to
7 forbid members of the Rest Period Class from leaving Defendants' facilities.

8 74. Under Section 12 of the IWC Wage Order(s) and Labor Code § 226.7(b) which
9 states "if an employer fails to provide an employee a meal or rest period in accordance with an
10 applicable order of the Industrial Welfare Commission, the employer shall pay the employee one
11 additional hour of pay at the employee's regular rate of compensation for each work day that the
12 meal or rest period is not provided," the members of the Rest Period Class are entitled to
13 damages in an amount equal to one (1) additional hour of pay at each employee's regular rate of
14 compensation for each work day that one or more rest periods were not so provided.

15 75. Under Labor Code § 218.6 and Civil Code § 3287, the members of the Rest
16 Period Class seek recovery of pre-judgment interest on all amounts recovered herein.

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO TIMELY**

19 **FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

20 **(On Behalf of the Wage Statement Class)**

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

24 77. Labor Code § 226(a) states in pertinent part, "Every employer shall, semimonthly
25 or at the time of each payment of wages, furnish each of his or her employees, either as a
26 detachable part of the check, draft, or voucher paying the employee's wages, or separately when
27 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
28 gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net wages

1 earned, (6) the inclusive dates of the period for which the employee is paid... (8) the name and
2 address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
3 each the pay period and the corresponding number of hours worked at each hourly rate by the
4 employee....”

5 78. Further, the IWC Wage Orders § 7(A) states in pertinent part, “(A) Every
6 employer shall keep accurate information with respect to each employee including the following:
7 (3) Time records showing when the employee begins and ends each work period. Meal periods,
8 split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked
9 in the payroll period and applicable rates of pay....”

10 79. Therefore, under Labor Code § 226(a) and the IWC Wage Orders § 7(A),
11 California employers are required to maintain accurate records pertaining to the total hours
12 worked for Defendants by the members of the Wage Statement Class, including but not limited
13 to, beginning and ending of each work period, meal period and split shift interval, the total daily
14 hours worked, and the total hours worked per pay period and applicable rates of pay.

15 80. As a pattern and practice, in violation of Labor Code § 226(a) and the IWC Wage
16 Orders § 7(A), Defendants did not and still do not furnish each of the members of the Derivative
17 Wage Statement Class with an accurate itemized statement in writing showing (1) gross wages
18 earned, (2) total hours worked by the employee, (3) all deductions, (4) net wages earned and/or
19 (5) all applicable hourly rates in effect during each respective pay period and the corresponding
20 number of hours worked at each hourly rate by each respective individual.

21 81. As set forth herein in prior causes of action, Defendants failed to pay the members
22 of the Wage Statement Class all wages due and owing.

23 82. As a derivative result of this failure to pay wages and as a pattern and practice in
24 violation of Labor Code § 226(a) and the IWC Wage Orders § 7(A), Defendants did not and do
25 not maintain accurate records pertaining to the total hours worked for Defendants by the
26 members of the Wage Statement Class, including but not limited to, beginning and ending of
27 each work period, meal period interval, total daily hours worked, total hours worked per pay
28 period, and the applicable rates of pay.

1 83. As of January 1, 2013, SB 1255 amended Labor Code § 226 to clarify that an
2 employee suffers injury if the employer fails to provide accurate and complete information as
3 required by any one or more items listed in Labor Code § 226(a)(1)-(9) and the employee cannot
4 promptly and easily ascertain requisite information without reference to other documents or
5 information.

6 84. Here, the members of Wage Statement Class suffered injury because, due to
7 Defendants' failure to pay all wages due and owing, Defendants derivatively failed to provide
8 accurate and complete information as required by one or more items listed in Labor Code §
9 226(a)(1)-(9).

10 85. In addition, the members of the Wage Statement Class have suffered injury as a
11 result of Defendants' failure to maintain accurate records for the members of the Wage
12 Statement Class in that the members of the Wage Statement Class were not timely provided
13 written accurate itemized statements showing all requisite information, including but not limited
14 to total hours worked by the employee, net wages earned and all applicable hourly rates in effect
15 during the pay period and the corresponding number of hours worked at each hourly rate, in
16 violation of Labor Code § 226 and the IWC Wage Orders § 7(A), such that the members of the
17 Wage Statement Class were misled by Defendants as to the correct information regarding
18 various items, including but not limited to total hours worked by the employee, net wages earned
19 and all applicable hourly rates in effect during the pay period and the corresponding number of
20 hours worked at each hourly rate.

21 86. The actual injuries suffered by the members of the Wage Statement Class as a
22 result of Defendants' knowing and intentional failure to maintain accurate records for the
23 members of the Wage Statement Class include but are not limited to:

- 24 a. Confusion over whether they received all wages owed them by Defendants;
- 25 b. The difficulty and expense of attempting to reconstruct time and pay records;
- 26 c. Being forced to engage in mathematical computations to analyze whether
- 27 Defendants' wages in fact compensated for all hours worked;

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- 1 d. The inability to accurately calculate wage rates complicated by the fact that
2 wage statement information required by Labor Code § 226 is missing;
3 e. That such practice prevents the members of the Derivative Wage Statement
4 Class from being able to effectively challenge information on their wage
5 statements; and/or
6 f. The difficulty and expense of filing and maintaining this lawsuit, and the
7 discovery required to collect and analyze the very information that California
8 law requires.

9 87. Under Labor Code § 226(e), the members of the Wage Statement Class are
10 entitled to \$50.00 per employee for the initial pay period in which a violation hereunder occurs
11 and \$100.00 per employee for each violation in a subsequent pay period, not exceeding an
12 aggregate penalty of \$4,000.00.

13 88. Under Labor Code § 226(g), the currently-employed members of the Wage
14 Statement Class are entitled to injunctive relief to ensure Defendants' compliance with Labor
15 Code § 226.

16 89. Under Labor Code §§ 226(e)/(g), the members of the Wage Statement Class are
17 also entitled to an award of costs and reasonable attorneys' fees.

18 **FIFTH CAUSE OF ACTION**

19 **DERIVATIVE VIOLATIONS OF LABOR CODE §§ 201-202**

20 **(On Behalf of the Derivative LC 203 Class)**

21 **(Against All Defendants)**

22 90. Plaintiffs incorporate by reference and reallege each and every one of the
23 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
24 forth herein.

25 91. Labor Code § 203 provides that if an employer willfully fails to pay, without
26 abatement or reduction, in accordance with Labor Code §§ 201 and 202, any wages of an
27 employee who is discharged or who quits, the wages of the employee shall continue at the same
28 rate, for up to 30 days from the due date thereof, until paid or until an action therefor is

1 commenced.

2 92. The members of the Derivative LC 203 Class are no longer employed by
3 Defendants as they were either discharged from or quit Defendants' employ.

4 93. Defendants had a consistent and uniform policy, practice, and procedure of
5 willfully failing to pay the earned wages of Defendants' former employees, as set forth above,
6 according to amendment or proof.

7 94. As set forth above, Defendants willfully failed to pay the members of the
8 Derivative LC 203 Class their entire wages due and owing at the time of their termination or
9 within seventy-two hours of their resignation and failed to pay those sums for up to 30 days
10 thereafter.

11 95. Defendants' willful failure to pay wages to the members of the Derivative LC 203
12 Class violates Labor Code § 203 because Defendants knew or should have known wages were
13 due to the members of the Derivative LC 203 Class, as set forth above, but Defendants failed to
14 pay them.

15 96. Thus, the members of the Derivative LC 203 Class are entitled to recovery under
16 Labor Code § 203.

17 **SIXTH CAUSE OF ACTION**

18 **INDEPENDENT VIOLATIONS OF LABOR CODE §§ 201-202**

19 **(On Behalf of the Independent LC 203 Class)**

20 **(Against All Defendants)**

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

24 98. Labor Code § 201(a) states in pertinent part, "If an employer discharges an
25 employee, the wages earned and unpaid at the time of discharge are due and payable
26 immediately."

27 99. Labor Code § 202(a) states in pertinent part, "If an employee not having a written
28 contract for a definite period quits his or her employment, his or her wages shall become due and

1 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous
2 notice of his or her intention to quit, in which case the employee is entitled to his or her wages at
3 the time of quitting. Notwithstanding any other provision of law, an employee who quits without
4 providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests
5 and designates a mailing address. The date of the mailing shall constitute the date of payment for
6 purposes of the requirement to provide payment within 72 hours of the notice of quitting.”

7 100. Labor Code § 203 provides that if an employer willfully fails to timely pay,
8 without abatement or reduction, in accordance with Labor Code §§ 201 and 202, any wages of an
9 employee who is discharged or who quits, the wages of the employee shall continue at the same
10 rate, for up to 30 days from the due date thereof, until paid or until an action therefore is
11 commenced.

12 101. The members of the Independent LC 203 Class are no longer employed by
13 Defendants as they were either discharged from or quit Defendants’ employ.

14 102. Defendants had a consistent and uniform policy, practice, and procedure of
15 willfully failing to timely pay the earned wages of Defendants’ former employees, according to
16 amendment or proof.

17 103. For example, Plaintiff SHARON ELIZABETH HERBERT resigned on October
18 30, 2022. However, Defendants did not pay her final wages for over 72 hours, providing the
19 check for final wages on November 10, 2022. This check did not include waiting time penalties.

20 104. As such, Defendants willfully failed to pay the members of the Independent LC
21 203 Class all wages due and owing at the time of their termination or within seventy-two hours
22 of their resignation.

23 105. Defendants’ willful failure to timely pay final wages to the members of the
24 Independent LC 203 Class violates Labor Code §§ 201-202 because Defendants knew or should
25 have known final wages were due to the members of the Independent LC 203 Class by a date
26 certain, but Defendants failed to pay them on a timely basis on or before that deadline.

27 106. Thus, the members of the Independent LC 203 Class are entitled to recovery
28 under to Labor Code § 203.

SEVENTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
(On Behalf of the 17200 Class)
(Against All Defendants)

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

108. Business & Professions Code § 17200 provides, in pertinent part, “unfair competition shall mean and include any unlawful, unfair or fraudulent business act.”

109. Business & Professions Code § 17205 provides that unless otherwise expressly provided, the remedies or penalties provided for unfair competition “are cumulative to each other and to the remedies or penalties available under all other laws of this state.”

110. Business & Professions Code § 17204 provides that an action for any relief from unfair competition may be prosecuted by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition.

111. Defendants have engaged in unlawful, unfair and fraudulent business acts or practices prohibited by Business & Professions Code § 17200, including those set forth in the preceding and foregoing paragraphs of the complaint, thereby depriving the members of the 17200 Class of the minimum working standards and conditions due to them under the Labor Code and/or the IWC Wage Orders, as specifically described herein.

112. Defendants have engaged in unfair business practices in California by practicing, employing and utilizing the employment practices outlined in the preceding paragraphs, specifically, by requiring employees to perform the labor services complained of herein without the requisite compensation.

113. Defendants have further engaged in unfair business practices in California by failing to always provide paid sick days paid at the regular rate of pay in violation of Labor Code § 246(l).

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1 114. Defendants' use of such practices constitutes an unfair business practice and
2 unfair competition and provides an unfair advantage over Defendants' competitors.

3 115. Plaintiffs have suffered injury in fact and have lost money or property as a result
4 of such unfair competition.

5 116. Plaintiffs seek full restitution from Defendants, as necessary and according to
6 proof, to restore any and all monies withheld, acquired, and/or converted by Defendants by
7 means of the unfair practices complained of herein.

8 117. Further, if Defendants are not enjoined from the conduct set forth above,
9 Defendants will continue to practice, employ, and utilize the employment practices outlined in
10 the preceding paragraphs.

11 118. Therefore, Plaintiffs request that the Court issue a preliminary and permanent
12 injunction prohibiting Defendants from engaging in the foregoing conduct.

13 119. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total
14 monetary relief sought from Defendants.

15 **VI.**

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs pray:

18 a. That the Court issue an Order certifying the Classes herein, appointing all named
19 Plaintiffs as representative of all others similarly situated, and appointing all law firms
20 representing all named Plaintiffs as counsel for the members of the Classes;

21 As to the First Cause of Action for Failure to Pay All Wages:

22 b. For recovery of the unpaid balance of the full amount of the straight time
23 compensation due and owing, according to proof;

24 c. For liquidated damages on the straight-time portion of uncompensated hours of
25 work (not including the overtime portion thereof), as authorized by Labor Code § 1194.2(a);

26 d. For recovery of the unpaid balance of the full amount of overtime compensation
27 due and owing, calculated at the appropriate rate and according to proof;

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1 e. For pre-judgment interest as allowed by Labor Code §§ 218.6 and 1194(a) and
2 Civil Code § 3287;

3 f. For an award of reasonable attorneys' fees and costs under Labor Code §§ 218.5
4 and/or 1194(a);

5 As to the Second Cause of Action for Failure to Provide Meal Periods:

6 g. For one hour of pay at the regular rate of compensation for each member of the
7 Meal Period Class for each workday that a meal or rest period was not provided;

8 h. For pre-judgment interest as authorized by Labor Code § 218.6 and Civil Code §
9 3287;

10 As to the Third Cause of Action for Failure to Authorize and Permit Paid Rest Periods:

11 i. For one (1) hour of pay at the regular rate of compensation for each member of
12 the Rest Period Class for each workday that a meal or rest period was not provided;

13 j. For pre-judgment interest as authorized by Labor Code §218.6 and CC §3287;

14 As to the Fourth Cause of Action for Failure to Timely Furnish Accurate Itemized Wage
15 Statements:

16 k. For recovery as authorized by Labor Code § 226(e);

17 l. For an award of costs and reasonable attorneys' fees under Labor Code §§
18 226(e)/(g);

19 As to the Fifth Cause of Action for Derivative Violations of Labor Code §§ 201-202:

20 m. For recovery as authorized by Labor Code § 203;

21 As to the Sixth Cause of Action for Independent Violations of Labor Code §§ 201-202:

22 n. For recovery as authorized by Labor Code § 203;

23 As to the Seventh Cause of Action for Unfair Business Practices:

24 o. For an accounting, under administration of Plaintiffs and/or the receiver and
25 subject to Court review, to determine the amount to be returned by Defendants, and the amounts
26 to be refunded to members of the Classes who are owed monies by Defendants;

27 p. For an Order requiring Defendants to identify each of the members of the Classes
28 by name, home address, home telephone number and, if available, email address;

1 q. For an Order requiring Defendants to make full restitution and payment under
2 California law;

3 r. For an Order for a preliminary and/or permanent injunction prohibiting
4 Defendants from engaging in the acts complained of herein;

5 s. For the creation of an administrative process wherein each injured member of the
6 Classes may submit a claim in order to receive his/her money;

7 t. For all other appropriate injunctive, declaratory and equitable relief;

8 u. For interest to the extent permitted by law;

9 v. For an award of attorneys' fees and costs incurred in the investigation, filing and
10 prosecution of this action under Code of Civil Procedure § 1021.5, Business & Professions Code
11 §§ 17200, et seq., Labor Code § 1194, and/or any other applicable provision of law;

12 As to All Causes of Action:

13 w. For such relief as this Court may deem just and proper, including reasonable
14 attorneys' fees and costs incurred.

15 **VII.**

16 **DEMAND FOR JURY TRIAL**

17 Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

18 Dated: October 27, 2023

D.LAW, INC.

19
20 By: 

Emil Davtyan, Esq.

Gregg Lander, Esq.

Vanessa M. Ruggles, Esq.

Attorneys for Plaintiffs