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Attorneys for Plaintiff JASMINA GUADALUPE
VARGAS GUTIERREZ, on behalf of herself and
others similarly situated.

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

JASMINA GUADALUPE VARGAS
GUTIERREZ, on behalf of herself and others
similarly situated,

Plaintiff,

vs.

HYVE SOLUTIONS CORPORATION dba
HYVE SOLUTIONS, a Delaware Corporation;
VOLT MANAGEMENT CORP. dba VOLT
WORKFORCE SOLUTIONS, a Delaware
Corporation; VOLT INFORMATION
SCIENCES, INC., a New York Corporation;
DESIGN & TECHNICAL SOLUTIONS, a
business entity of unknown form; P/S
PARTNER SOLUTIONS, LTD., a Delaware
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a);
6. Failure to Keep Required Payroll Records Under Labor Code §§ 1174, and 1174.5;
7. Penalties Pursuant to Labor Code § 203;
8. Failure to Pay Proper Vacation Wages Under Labor Code § 227.3;
9. Failure to Comply with Labor Code § 245 *et seq.* and 246; and
10. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

1. Plaintiff JASMINA GUADALUPE VARGAS GUTIERREZ, (hereinafter “Plaintiff”) on behalf of herself and all others similarly situated (collectively, “Employees”) complains of HYVE SOLUTIONS CORPORATION dba HYVE SOLUTIONS; VOLT MANAGEMENT CORP. dba VOLT WORKFORCE SOLUTIONS; VOLT INFORMATION SCIENCES, INC.; DESIGN & TECHNICAL SOLUTIONS; and P/S PARTNER SOLUTIONS, LTD., Defendants, and each of them, as follows:

INTRODUCTION

2. Plaintiff brings this action on behalf of herself and all current and former Employees within the State of California who, at any time four (4) years prior to the filing of this lawsuit, are or were employed as non-exempt, hourly employees by HYVE SOLUTIONS CORPORATION dba HYVE SOLUTIONS; VOLT MANAGEMENT CORP. dba VOLT WORKFORCE SOLUTIONS; VOLT INFORMATION SCIENCES, INC.; DESIGN & TECHNICAL SOLUTIONS; P/S PARTNER SOLUTIONS, LTD.; and DOES 1 through 50 (all defendants being collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each of them, violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC) and California Business & Professions Code, and seeks redress therefore.

3. Plaintiff is a resident of California and during the time period relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within the State of California at Defendants' facilities and offices in California. Plaintiff and Employees worked for Defendants in Alameda County, and in other nonexempt positions, throughout California, and consistently worked at Defendants' behest without being paid all wages due. More specifically, Plaintiff and Employees were employed by Defendants and worked at Defendants' offices and other facilities where the conduct giving rise to the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was subjected to the same policies and practices, and (3) endured similar violations at the hands of Defendants as Employees who served in similar and related positions.

4. Defendants required Plaintiff and Employees to perform work while remaining under Defendants' control while off the clock and during their meal breaks. Defendants thus failed to pay Plaintiff and Employees for all hours worked, and provided them with inaccurate wage statements that prevented Plaintiff and Employees from learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and Employees with lawful meal and rest periods, as Plaintiff and Employees were not provided with the opportunity to take timely, uninterrupted, and duty-free meal and rest periods as required by the Labor Code.

THE PARTIES

A. The Plaintiff

5. Plaintiff JASMINA GUADALUPE VARGAS GUTIERREZ has resided in California and during the time period relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within the State of California.

B. The Defendants

6. Defendant HYVE SOLUTIONS CORPORATION dba HYVE SOLUTIONS (“HYVE SOLUTIONS”) is a Delaware corporation with its principle executive office in Fremont, California and has been listed as the employer on Plaintiff’s personnel file during the relevant time period. HYVE SOLUTIONS lists a California address in Fremont, California with the California Secretary of State, and employed Plaintiff and Employees in Alameda County, including at Defendants’ offices and facilities in Fremont, California, and throughout California and conducts business throughout California. Plaintiff is informed and believes, and based thereon alleges, that HYVE SOLUTIONS is a “client employer” within the meaning of Labor Code § 2810.3 that procures outplacement staffing and payroll services from various staffing agencies, including but not limited to, VOLT MANAGEMENT CORP. dba VOLT WORKFORCE SOLUTIONS; VOLT INFORMATION SCIENCES, INC.; DESIGN & TECHNICAL SOLUTIONS; and P/S PARTNER SOLUTIONS, LTD.

7. Defendant VOLT MANAGEMENT CORP. dba VOLT WORKFORCE SOLUTIONS (“VOLT MANAGEMENT”) is a Delaware corporation with its California office located in Orange, California and doing business in California in the County of Alameda. VOLT

1 MANAGEMENT has been listed as the employer on Plaintiff's personnel file during the relevant
2 time period. Plaintiff is informed and believes, and based thereon alleges, that VOLT
3 MANAGEMENT is a "labor contractor" within the meaning of Labor Code § 2810.3 that provides
4 outplacement staffing and payroll services for various industries and professions, including for
5 HYVE SOLUTIONS.

6 8. Defendant VOLT INFORMATION SCIENCES, INC. ("VOLT SCIENCES") is a
7 New York corporation with its California office located in Orange, California and doing business
8 in California in the County of Alameda. VOLT SCIENCES has been listed as the employer on
9 Plaintiff's personnel file during the relevant time period. Plaintiff is informed and believes, and
10 based thereon alleges, that VOLT MANAGEMENT is a "labor contractor" within the meaning of
11 Labor Code § 2810.3 that provides outplacement staffing and payroll services for various
12 industries and professions, including for HYVE SOLUTIONS.

13 9. Defendant DESIGN & TECHNICAL SOLUTIONS is a business entity of
14 unknown form doing business in California in the County of Alameda. DESIGN & TECHNICAL
15 SOLUTIONS has been listed as the employer on Plaintiff's personnel file during the relevant time
16 period. Plaintiff is informed and believes, and based thereon alleges, that DESIGN &
17 TECHNICAL SOLUTIONS is a "labor contractor" within the meaning of Labor Code § 2810.3
18 that provides outplacement staffing and payroll services for various industries and professions,
19 including for HYVE SOLUTIONS.

20 10. Defendant P/S PARTNER SOLUTIONS, LTD. ("P/S SOLUTIONS") is a
21 Delaware corporation with its California office located in Orange, California and doing business in
22 California in the County of Alameda. P/S PARTNER SOLUTIONS has been listed as the
23 employer on Plaintiff's personnel file during the relevant time period. Plaintiff is informed and
24 believes, and based thereon alleges, that P/S SOLUTIONS is a "labor contractor" within the
25 meaning of Labor Code § 2810.3 that provides outplacement staffing and payroll services for
26 various industries and professions, including for HYVE SOLUTIONS.

27 11. The true names and capacities, whether individual, corporate, associate, or
28 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently

1 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
2 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
3 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
4 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
5 this Complaint to reflect the true names and capacities of the Defendants designated herein as
6 Does 1 through 50 when their identities become known.

7 12. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
8 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
9 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
10 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
11 all respects as the employers or joint employers of Employees. Defendants, and each of them,
12 exercised control over the wages, hours or working conditions of Employees, or suffered or
13 permitted Employees to work, or engaged, thereby creating a common law employment
14 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
15 employed Employees.

16 **JURISDICTION AND VENUE**

17 13. This Court has jurisdiction over this Action pursuant to California Code of Civil
18 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
19 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
20 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
21 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
22 obligations and liabilities giving rise to this lawsuit occurred at least in part in Alameda County
23 and Defendants maintain and operate company offices and facilities in Alameda County, and
24 employ Plaintiff and other Class Members in Alameda County and throughout California.

25 **FACTUAL BACKGROUND**

26 14. The Employees who comprise the Class and Collective Action, including Plaintiff,
27 are nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
28 Employees who work in nonexempt positions at the direction of Defendants in the State of

1 California. Plaintiff and Employees were not paid by Defendants for all hours worked and were
2 not paid at the appropriate minimum, regular and overtime rates. Specifically, Defendants
3 required Plaintiff and Employees to work without compensation by going through lengthy
4 security checks multiple times a day, as part of their duties under Defendants' employ, for which
5 they were never compensated. Defendants systematically required Plaintiff and Employees to
6 wait in line, while off the clock, for mandatory security checks and to clock in and out, all such
7 time for which Defendants systematically failed to compensate Plaintiff and Employees.
8 Moreover, Plaintiff and Employees were required or suffered by Defendants to work while
9 clocked out, including while clocked out for meal periods. Plaintiff also contends that Defendants
10 failed to pay Plaintiff and the Class members all wages due and owing, and failed to provide meal
11 and rest breaks, all in violation of various provisions of the California Labor Code and applicable
12 Wage Orders.

13 15. During the course of Plaintiff's and Employees' employment with Defendants, they
14 were not paid all wages they were owed, including for all work performed and for all overtime
15 hours worked, and were forced to work during their meal and rest breaks to keep labor budgets
16 low.

17 16. As a matter of Defendants' uniform Company policy and practice, Plaintiff and the
18 Class members were required to work during their meal and rest breaks which were not
19 compensated by Defendants in violation of the California Labor Code. Plaintiff and the Class
20 members were also not paid regular wages and overtime for the time they were required to comply
21 with other requirements imposed upon them, which they had to complete while working through
22 their meal and rest breaks and without compensation. Moreover, Plaintiff and Employees were
23 required to suffer under Defendants' control by going through mandatory security checks while
24 off-the-clock. As a result, Plaintiff and the Class members worked shifts over eight (8) hours in a
25 day and over forty (40) hours in a work week, but they were not paid at the appropriate overtime
26 rate for all such hours, including by being required to perform work duties and tasks without pay
27 and while off-the-clock. As a result, Plaintiff and Employees worked substantial overtime hours
28 during their employment with Defendants for which they were not compensated, in violation of

1 the California Labor Code, applicable IWC Wage Orders.

2 17. Moreover, when Employees did work overtime, they were not compensated at the
3 required and correct rate because Defendants failed to incorporate incentive pay that Employees
4 received into the regular rate of pay used to calculate overtime pay. More specifically, in each pay
5 period, Employees were paid shift differentials, meal allowances, incentive pay and incentive
6 bonuses, that were non-discretionary and were tied directly to the daily or weekly performance of
7 their jobs. However, contrary to the requirements of the Labor Code and IWC Wage Orders under
8 California law, Defendants did not incorporate the incentive bonuses and/or commissions they
9 paid to Employees into the regular rate of pay Defendants used to calculate and pay overtime to
10 Employees.

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

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

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

1 and Employees overtime compensation at premium overtime rates for all hours worked in excess
2 of eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked
3 in excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
4 sections of IWC Wage Orders.

5 21. Additionally from at least four (4) years prior to the filing of this lawsuit and
6 continuing to the present, Defendants have regularly required Plaintiff and Employees to work
7 shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not
8 less than thirty (30) minutes and shifts in excess of ten (10) hours without providing them with
9 second meal periods of not less than thirty minutes; nor did Defendants pay Employees “premium
10 pay,” i.e. one hour of wages at each Employee’s effective regular rate of pay, for each meal period
11 that Defendants failed to provide or deficiently provided.

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

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

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

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

26. Defendants also had a common policy and practice of systemically failing to pay Plaintiff and Employees the requisite and accrued vacation time pay in accordance with California Law. Specifically, Plaintiff and Employees accrued vested vacation time and/or paid time off. However, Defendants failed to pay all accrued vacation time and/or paid time off owed to Plaintiff and Class Members upon their separation from employment.

27. Defendants also violated California Labor Code § 246 by not providing all required paid sick days to Plaintiff and Employees at the regular rate of pay under Labor Code § 246(l). Labor Code § 246 provides that an employee who “works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.” Labor Code § 246(l)(1) provides that paid sick leave shall be calculated “in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek....” Defendants failed to provide Plaintiff and Employees with all their required and earned sick days paid at the regular rate of pay, in violation of Labor Code § 246.

28. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor Code §§ 201, 201.3, 202, 203, 204, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1198.5, 1199, and 2802.

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

CLASS ALLEGATIONS

30. Plaintiff brings this class action on behalf of herself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows: all individuals employed by Defendants as non-exempt employees within the State of California at any time within four (4) years of the filing of this lawsuit.

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

a. Subclass 1. Minimum Wages Subclass. All Class members who were not

1 compensated for all hours worked for Defendants at the applicable minimum wage.

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

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

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

12 e. Subclass 5. Payroll Records Subclass. All Class members who were subject to
13 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
14 by California wage-and-hour laws.

15 f. Subclass 6. Wage Statement Subclass. All Class members who, within the
16 applicable limitations period, were not provided with accurate itemized wage statements.

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

21 h. Subclass 8. Vacation Pay Class: All Class members who earned paid vacation time
22 and/or paid time off without receiving compensation for all vested paid vacation time.

23 i. Subclass 9. Sick-Pay Class: All Class members who were not compensated at the
24 Employee's regular rate of pay for their sick pay wages.

25 j. Subclass 10. UCL Subclass. All Class members who are owed restitution as
26 a result of Defendants' business acts and practices, to the extent such acts and practices are found
27 to be unlawful, deceptive, and/or unfair.

28 32. Plaintiff reserves the right under California Rule of Court 3.765 to amend or

1 modify the class description with greater particularity or further division into subclasses or
2 limitation to particular issues.

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

6 **A. Numerosity**

7 34. The potential members of the class as defined are so numerous that joinder of all
8 the members of the class is impracticable. While the precise number of class members has not
9 been determined at this time, Plaintiff is informed and believes that Defendants employ or, during
10 the time period relevant to this lawsuit, employed more than 100 non-exempt individuals within
11 the State of California.

12 35. Accounting for employee turnover during the relevant time period increases this
13 number substantially. Plaintiff alleges that Defendants' employment records will provide
14 information as to the number and location of all class members.

15 **B. Commonality**

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

- 19 a. Whether Defendants failed to pay Employees minimum wages;
- 20 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 21 c. Whether Defendants failed to pay Employees overtime as required under Labor
22 Code § 510;
- 23 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
24 IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay
25 in lieu thereof;
- 26 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
27 Orders, by failing to provide Employees with requisite rest breaks or premium pay in lieu thereof;
- 28 f. Whether Defendants violated Labor Code § 226(a);

- 1 g. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 2 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
- 3 wages and compensation due and owing at the time of termination or separation of employment;
- 4 i. Whether Defendants failed to pay proper vacation wages at separation of
- 5 employment;
- 6 j. Whether Defendants violated California Labor Code § 245 *et seq.* and § 246 by not
- 7 providing employees with all required sick hours/days at the regular rate of pay;
- 8 k. Whether Defendants failed to pay Employees vacation wages as required under
- 9 Labor Code § 227.3;
- 10 l. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 11 m. Whether Employees are entitled to equitable relief pursuant to Business and
- 12 Professions Code § 17200 *et seq.*

13 **C. Typicality**

14 37. The claims of the named plaintiff are typical of those of the other Employees.

15 Employees all sustained injuries and damages arising out of and caused by Defendants' common

16 course of conducts in violation of statutes, as well as regulations that have the force and effect of

17 law, as alleged herein.

18 **D. Adequacy of Representation**

19 38. Plaintiff will fairly and adequately represent and protect the interest of Employees.

20 Counsel who represents Employees are experienced and competent in litigating employment class

21 actions.

22 **E. Superiority of Class Action**

23 39. A class action is superior to other available means for the fair and efficient

24 adjudication of this controversy. Individual joinder of all Employees is not practicable, and

25 questions of law and fact common to all employees predominate over any questions affecting only

26 individual employees. Each employee has been damaged and is entitled to recovery by reason of

27 Defendants' illegal policies or practices of failing to compensate Employees properly.

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

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

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

5 **(Against All Defendants)**

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

8 42. Defendants failed to pay Employees minimum wages for all hours worked.
9 Defendants had a consistent policy of misstating Employees' time records and failing to pay
10 Employees for all hours worked. Employees would work hours and not receive wages, including
11 as alleged above in connection with working during meal breaks, and worked "pre-shift" and
12 "post-shift" without compensation by being under Defendants' control and direction while
13 spending time off-the-clock going through mandatory security checks and waiting in line off-the-
14 clock to clock in. Additionally, Defendants had a consistent policy of failing to pay Employees
15 for hours worked during alleged meal periods for which Employees were consistently denied, as
16 also addressed herein. Moreover, Defendants did not pay Plaintiff and Employees at the
17 applicable minimum wage for all hours worked. Defendants' uniform pattern of unlawful wage
18 and hour practices manifested, without limitation, applicable to the Class as a whole, as a result
19 of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and
20 the other members of the Class as to minimum wage pay.

21 43. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
22 states:

23 The minimum wage for employees fixed by the commission is the minimum
24 wage to be paid to employees, and the payment of a less wage than the
25 minimum so fixed is unlawful.

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

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

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

46. As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission.

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

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

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

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

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

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

51. By their conduct, as set forth herein, Defendants violated California Labor Code § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:

(a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a

1 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
2 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
3 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
4 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
5 paying Employees wages for all hours worked including time off the clock working “pre-shift”
6 and “post-shift” without compensation by being under Defendants’ control and direction while
7 spending time off-the-clock going through mandatory security checks and waiting in line off-the-
8 clock to clock in. Additionally, Defendants had a consistent policy of failing to pay Employees
9 for hours worked during alleged meal periods for which Employees were consistently denied.
10 Employees regularly worked over 8 hours on a given day without receiving overtime
11 compensation. Moreover, Employees were paid shift differentials, meal allowances, incentive
12 pay and incentive bonuses, that were non-discretionary and were tied directly to the daily or
13 weekly performance of their jobs. However, contrary to the requirements of the Labor Code and
14 IWC Wage Orders under California law, Defendants did not incorporate the incentive bonuses
15 and/or commissions they paid to Employees into the regular rate of pay Defendants used to
16 calculate and pay overtime to Employees.

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

23 53. Defendants’ failure to pay compensation in a timely fashion also constituted a
24 violation of California Labor Code § 201.3, which instructs that “if an employee of a temporary
25 services employer is assigned to work for a client, that employee’s wages are due and payable no
26 less frequently than weekly, regardless of when the assignment ends, and wages for work
27 performed during any calendar week shall be due and payable not later than the regular payday of
28 the following calendar week.” From four (4) years prior to the filing of this lawsuit to the present,

1 in direct violation of that provision of the California Labor Code, Defendants have failed to pay
2 all wages and overtime compensation earned by Employees. Each such failure to make a timely
3 payment of compensation to Employees constitutes a separate violation of California Labor Code
4 § 201.3.

5 54. From four (4) years prior to the filing of this lawsuit to the present, in direct
6 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
7 and overtime compensation earned by Employees. Each such failure to make a timely payment of
8 compensation to Employees constitutes either a separate violation of California Labor Code §
9 204 or § 201.3.

10 55. Employees have been damaged by these violations of California Labor Code §§
11 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

12 56. Consequently, pursuant to California Labor Code §§ 201.3, 204, 510, and 1194
13 (and the relevant orders of the Industrial Welfare Commission), Defendants are liable to
14 Employees for the full amount of all their unpaid wages and overtime compensation, with
15 interest, plus their reasonable attorneys' fees and costs.

16 **THIRD CAUSE OF ACTION**

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

18 **(Against All Defendants)**

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

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

26 59. Defendants failed to provide Employees with meal periods as required under the
27 Labor Code. Employees were consistently required to work through their meal periods which they
28 were consistently denied. Employees were also required to take meal periods after working

1 beyond the five (5) hour shifts. During meal periods, Employees would be disrupted or interrupted
2 by Defendants with work related requests and communications. Plaintiff and Employees were
3 also, at times, not permitted to take full and complete thirty-minute meal periods, and otherwise
4 took meal periods shorter than thirty minutes in length, due to the control and workload exercised
5 upon Employees by Defendants. Specifically, after clocking out for a meal period and before
6 clocking back in from a meal period, Plaintiff and Employees were required by Defendants to go
7 through security checks of their person and belongings. Furthermore, Employees were regularly
8 required to work for more than 10 hours in a given shift without receiving a second uninterrupted
9 thirty (30) minute meal period as required by law.

10 60. Moreover, Defendants failed to compensate Employees for each meal period not
11 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
12 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
13 employee a meal period in accordance with this section, the employer shall pay the employee one
14 hour of pay at the employee's regular rate of compensation for each workday that the meal period
15 is not provided. Defendants failed to compensate Plaintiff and Employees for each meal period not
16 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
17 20 of the applicable IWC Wage Order.

18 61. Therefore, pursuant to Labor Code § 226.7, Plaintiff and Employees are entitled to
19 damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each
20 meal period not provided or deficiently provided, a sum to be proven at trial. Plaintiff and
21 Employees are also entitled to prejudgment interest for such damages.

22 **FOURTH CAUSE OF ACTION**

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

24 **(Against All Defendants)**

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

27 63. Plaintiff and Employees consistently worked over three-and-one-half (3.5) hour
28 and six (6) hour shifts. At times, Employees worked over ten (10) hours in a single workday.

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

4 64. Defendants failed to provide Employees with timely rest breaks of not less than ten
5 (10) minutes for each consecutive four (4) hours of work, or major fraction thereof, when
6 Employees worked over three-and-one-half (3.5) hours in a workday. In addition, when Plaintiff
7 and Employees did receive the opportunity to take rest periods, Defendants did not permit Plaintiff
8 and Employees to leave the work premises. More particularly, Plaintiff and Employees were not
9 permitted to take full and complete duty-free 10-minute rest periods because if Plaintiff and
10 Employees wanted to exit the premises, they were required to spend time going through
11 Defendants' mandatory security checks before exiting the premises and before returning to the
12 premises. Consequently, Defendants did not permit Plaintiff and Employees the reasonable
13 opportunity to exit the premises and still have a duty and control free 10-minute rest period.
14 Further, Defendants would interrupt Plaintiff and Employees during rest periods with work related
15 requests and communications.

16 65. Additionally, under *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 260
17 (2016) "[D]uring required rest periods, employers must relieve their employees of all duties and
18 relinquish any control over how employees spend their time." Defendants did not allow
19 Employees to leave the Defendants' location and this is directly at odds with *Augustus*, as it
20 "tethered [employees] by time and policy to a particular location" and therefore fails to relieve
21 employees of all work duties and employer control during rest periods. *Augustus*, 2 Cal.5th at 269.

22 66. Moreover, Defendants failed to compensate Employees for each rest period not
23 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
24 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in
25 accordance with this section, the employer shall pay the employee one hour of pay at the
26 employee's regular rate of compensation for each workday that the rest period is not provided.
27 Defendants failed to compensate Plaintiff and Employees for each rest period not provided or
28 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage

1 Order.

2 67. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
3 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
4 worked without the required rest breaks, a sum to be proven at trial. Plaintiff and Employees are
5 also entitled to prejudgment interest for such damages.

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

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

11 69. California Labor Code § 226(a) requires an employer to furnish each of his or her
12 employees with an accurate, itemized statement in writing showing inclusive dates of the pay
13 period, the gross and net earnings, total hours worked, and the corresponding number of hours
14 worked at each hourly rate. In addition, Labor Code § 226(a) requires that the wage statement
15 depict “the name and address of the legal entity that is the employer. These statements must be
16 appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the
17 employee’s wages; or, if wages are paid by cash or personal check, these statements may be given
18 to the employee separately from the payment of wages. In either case the employer must give the
19 employee these statements twice a month or each time wages are paid.

20 70. Defendants failed to provide Employees with accurate itemized wage statements in
21 writing, as required by the Labor Code. Specifically, the wage statements given to Employees by
22 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal
23 periods and rest breaks, all of which Defendants knew or reasonably should have known were
24 owed to Employees, as alleged hereinabove. In addition, the wage statements failed to incorporate
25 shift differentials, meal allowances, non-discretionary and performance-based bonuses (incentive
26 pay) into the regular rate of pay used to calculate and pay overtime compensation. The wage
27 statements provided to Employees were confusing and required Employees to engage in discovery
28 and refer to outside sources to verify whether their pay was correct and potentially resulting in a

1 miscalculation by the Employees.

2 71. In addition, Defendants had a systematic practice of failing to issue or make
3 available wage statements as a result of Defendants' policy of not providing hard copies to
4 Employees, but instead notifying Employees that their paystubs will be available for electronic
5 retrieval without ever instructing Employees on how to access or retrieve such electronic wage
6 statements.

7 72. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
8 Employees suffered injuries, including among other things confusion over whether they received
9 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
10 forcing them to make mathematical computations to analyze whether the wages paid in fact
11 compensated them correctly for all hours worked.

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

17 74. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a
18 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for
19 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
20 employee for each pay period.

21 75. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and
22 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be
23 shown according to proof. Plaintiff and Employees are also entitled to an award of costs and
24 reasonable attorneys' fees.

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SIXTH CAUSE OF ACTION
FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE §§ 1174
and 1174.5
(Against All Defendants)

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

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

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

79. Defendants are also required by California Labor Code § 1198 and the applicable Wage Order to maintain a tracking system that accurately records the times at which Employees works.

80. Defendants have maintained a common unlawful policy and practice of failing to accurately record meal breaks. At all times relevant hereto, Defendants had maintained an unlawful uniform policy and practice of editing the time records entered by its Employees to change the actual meal break times recorded by the employee, in order to make it appear as though Defendants' Employees took timely and compliant meal breaks.

81. Defendants' failure to pay wages, as alleged above, was willful in that Defendants knew wages to be due but failed to pay them.

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

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

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

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

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

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

87. Defendants' failure to pay wages, as alleged above, was willful in that Defendants knew wages to be due but failed to pay them; this violation entitles these Employees to penalties under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due. Plaintiff and Employees are also entitled to an award of costs and reasonable attorneys' fees.

EIGHTH CAUSE OF ACTION
FAILURE TO PAY VACATION WAGES UNDER LABOR CODE § 227.3
(Against All Defendants)

88. Plaintiff re-alleges and incorporates the preceding paragraphs as as though set forth in full herein.

89. California Labor Code section 227.3 provides:

Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

1 90. At all relevant times during the applicable limitations period, Plaintiff and
2 Employees accrued vacation time, and/or paid time off, during their employment with
3 Defendants.

4 91. However, Defendants implemented a common policy and practice of failing to pay
5 Plaintiff and Employees for all accrued vacation wages upon separation of employment, in
6 violation of Labor Code 227.3.

7 92. By reason of the above, Plaintiff and Employees are entitled to restitution for all
8 unpaid amounts due and owing to within four (4) years of the date of the filing of the original
9 Complaint until the date of entry of judgment.

10 93. Plaintiff, on behalf of herself and Employees, seeks interest thereon pursuant to
11 California Labor Code section 218.6, costs pursuant to California Labor Code section 218.6, and
12 reasonable attorneys' fees pursuant to California Code of Civil Procedure section 1021.5.

13 **NINTH CAUSE OF ACTION**

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

15 **(Against All Defendants)**

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

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

22 96. Labor Code Section 246 affords an employee “who works in California for 30 or
23 more days within a year from the commencement of employment [] paid sick days . . . of not less
24 than one hour per every 30 hours worked” and “no less than 24 hours of accrued sick leave or paid
25 time off by the 120th calendar day of employment or each calendar year, or in each 12-month
26 period.”

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1 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
2 meaning of Code of Civil Procedure § 1021.5.

3 103. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
4 has suffered injury, and therefore has standing to bring this cause of action for injunctive relief,
5 restitution, and other appropriate equitable relief.

6 104. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
7 business practices.

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

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

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

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

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

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

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. An order that Plaintiff be appointed class representative;
3. An order that counsel for Plaintiff be appointed class counsel;
4. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
5. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
6. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
7. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
8. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
9. For penalties pursuant to Labor Code § 226.3, as may be proven;
10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

11. For penalties pursuant to Labor Code § 227.3, as may be proven;
12. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;
13. For penalties pursuant to Labor Code § 1174.5, as may be proven;
14. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;
15. For compensatory damages in the amount equal to the unpaid vacation hours at separation of employment;
16. For compensatory damages in the amount equal to the sick hours required by law but not granted by Defendants;
17. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;
18. For all general, special, and incidental damages as may be proven;
19. For an award of pre-judgment and post-judgment interest;
20. For an award providing for the payment of the costs of this suit;
21. For an award of attorneys' fees; and
22. For such other and further relief as this Court may deem proper and just.

DATED: November 30, 2023

D.LAW, INC.

By



Emil Davtyan
David Yeremian
Roman Shkodnik
Robert Payaslyan
Attorneys for Plaintiff JASMINA
GUADALUPE VARGAS GUTIERREZ
and the putative class

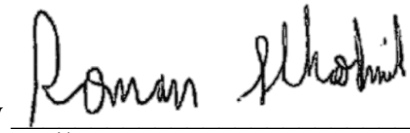
1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

3
4 DATED: November 30, 2023

D.LAW, INC.

5
6 By



7 Emil Davtyan
8 David Yeremian
9 Roman Shkodnik
10 Robert Payaslyan
11 Attorneys for Plaintiff JASMINA
12 GUADALUPE VARGAS GUTIERREZ
13 and the putative class
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