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of herself and others similarly situated

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
01/22/2024
Clerk of the Court
BY: WILLIAM TRUPEK
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

ADELAIDA N. SALANGSANG, an
individual, on behalf of herself and others
similarly situated,

Plaintiff,

vs.

HEALTHFLEX HOME HEALTH
SERVICES, a California stock corporation;
HEALTHFLEX HOSPICE, a California
stock corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: CGC-23-610482

CLASS ACTION

Assigned for All Purposes To:

Hon. To be determined.

Dept.: To be determined.

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Labor Code § 226.7;
4. Rest-Break Liability Labor Code § 226.7;
5. Violation of Labor Code § 226;
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
10. Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802;
11. Violation of Business & Professions Code § 17200 *et seq.*; and
12. Penalties under PAGA Labor Code § 2698

DEMAND FOR JURY TRIAL

Original Complaint Filed: November 16, 2024

Trial Date: None Set.

1 Plaintiff ADELAIDA N. SALANGSANG (hereinafter “Plaintiff”), on behalf of herself
2 and other similarly situated non-exempt employees employed by Defendants within the state of
3 California during the relevant time period (collectively, “Employees”; individually, “Employee”),
4 complains of Defendants, and each of them, as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of herself and all current and former
7 Employees within the State of California who, at any time from four years prior to the filing of
8 this lawsuit, are or were employed as non-exempt employees paid on an hourly basis, on piece
9 rate basis, or a hybrid of the two, and including those employed as certified home health aides,
10 hospice aides, nurses, certified clinicians, and in similar and in similar and related positions by
11 Defendants HEALTHFLEX HOME HEALTH SERVICES, a California corporation;
12 HEALTHFLEX HOSPICE, a California corporation; and DOES 1 through 50, inclusive (all
13 defendants being collectively referred to herein as “Defendants”). Plaintiff alleges that
14 Defendants, and each of them, violated various provisions of the California Labor Code, relevant
15 orders of the Industrial Welfare Commission (IWC), and California Business & Professions
16 Code, and seeks redress for these violations.

17 2. Plaintiff and the Class Members worked as non-exempt Employees for Defendants
18 in positions generally pertaining to providing home health aide, caregiving, and related services
19 to Defendants’ patients. Plaintiff, and upon information and belief the other similarly situated
20 Employees in the Class, were required to perform work tasks based out in areas where
21 Defendants provide services, including the cities of Oakland, Burlingame, San Jose, and Fairfield
22 and upon information and belief in the counties of San Francisco, San Mateo, Santa Clara,
23 Alameda, Contra Costa, Solano, Marin, Sonoma, Napa, San Joaquin, and Sacramento in
24 California. Plaintiff was employed by Defendants as a certified home health aide in San Francisco
25 County during the relevant period, and Defendants tasked her with duties that included assisting
26 with rehabilitation exercises, administering prescription medication, and monitoring vitals.

27 3. Defendants employed other similarly situated Employees in similar and related
28 positions based out of Defendants’ California facilities and offices and throughout various

1 California counties. Plaintiff and the other similarly situated Class Members worked at
2 Defendants' behest without being paid all wages due. More specifically, Plaintiff and the other
3 similarly situated Class Members were employed by Defendants and (1) shared similar job duties
4 and responsibilities (2) were subjected to the same policies and practices (3) and endured similar
5 violations at Defendants' hands.

6 4. Defendants required Plaintiff and the Employees in the Class to work off the clock
7 and failed to accurately record the hours they were on the clock, failed to pay them at the
8 appropriate rates for all hours worked or all pieces generated, failed to pay all wages due and
9 owing at termination or resignation, and failed to provide Plaintiff and Class Members with
10 accurate itemized wage statements that prevented them from learning of these unlawful pay
11 practices. Defendants also failed to provide Plaintiff and the Class with lawful meal and rest
12 periods, as Employees were required to remain under Defendants' control and were not provided
13 with the opportunity to take full uninterrupted and duty-free rest periods and meal breaks, as
14 required by the Labor Code and the applicable paragraphs of the IWC Wage Orders.
15 Additionally, to the extent Plaintiff was paid at a piece rate basis, Defendants failed to pay for all
16 non-productive time and rest and recovery time when Plaintiff was not generating pieces, as
17 required under Labor Code § 226.2.

18 5. Defendant HEALTHFLEX HOME HEALTH SERVICES is a California
19 corporation which lists its principal address in Oakland, California with the California Secretary
20 of State. It lists a registered corporate agent with an address in San Francisco, California and in
21 San Francisco County. The wage statements issued to Plaintiff list "Healthflex Home Health
22 Services" as her employers with an address in Oakland, California. The Notice to Plaintiff under
23 Labor Code 2810.5 lists "HealthFlex Home Health" as the hiring employer and that he would be
24 paid at a rate of \$25/hr. Healthflex Home Health Services lists its type of business as "Home
25 health services." Upon information and belief, Healthflex Home Health Services is a company
26 that provides caregiving, home health, home health aide, hospice, nursing, and therapy services in
27 the counties of San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa, Solano, Marin,
28 Sonoma, Napa, San Joaquin, Sacramento and throughout California. Healthflex Home Health

Services' website explains that: "From the North Bay to the East Bay to the South Bay, [they] provide the most trusted home healthcare services to [their] patients."

6. Upon information and belief, HEALTHFLEX HOSPICE is a related entity to named Defendant HEALTHFLEX HOME HEALTH SERVICES and is also California stock corporation that also lists the same Oakland, California address as its principle and California offices. Upon information and belief, Defendants Healthflex Home Health Services and Healthflex Hospice jointly employed Plaintiff and the similarly situated home health aides and other non-exempt Employee Class Members based out of offices and the counties where Defendants provide home care and hospice services to patients in California. Some documents provided to Plaintiff list HealthFlex Hospice and others are directed to an unknown entity named HealthFlex Home Health and Hospice Services.

7. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and liabilities giving rise to this lawsuit occurred, at least in part in San Francisco County and Defendants have employed Plaintiff and other Class members in San Francisco County during the relevant period. Defendants employ Class Members at offices and client-designated locations in San Francisco County and throughout California.

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

9. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all respects as the employers or joint employers of Employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of Employees, created and implemented the policies and practices that governed the employment of Plaintiff and the Class Members and dictated their job duties and responsibilities, or otherwise suffered or permitted Plaintiff and the other Employee Class Members to work, or engaged them, thereby creating a common law employment relationship with the Employee Class Members. Therefore, Defendants, and each of them, employed or jointly employed the Employee Class Members.

FACTUAL BACKGROUND

10. The Employees who comprise the Class, including Plaintiff, are non-exempt employees pursuant to the applicable Wage Order of the Industrial Welfare Commission (“IWC”). During the period of four years prior to the filing of this action through its resolution, the Employee Class Members were employed by Defendants and worked in non-exempt positions at the direction of Defendants in the State of California. Plaintiff and the Class Members were either not paid by Defendants for all hours worked or pieces generated or were not paid at the appropriate minimum, regular and overtime rates. Defendants further made unlawful deductions from Employees’ pay, failed to provide timely, uninterrupted meal and rest breaks, failed to reimburse necessary business expenditures, and failed to furnish accurate wage statements, all in violation of various provisions of the California Labor Code and applicable Wage Orders. To the extent Defendants paid Plaintiff and Class Members on piece rate basis, Defendants also failed to pay them for all non-productive time, including for all non-productive rest and recovery time, as required under Labor Code § 226.2 during the times when they were not generating pieces. This practice resulted in Class Members performing off-the-clock work and the under-recording of hours worked, all while under they were performing work-related job duties or were otherwise under the control of Defendants.

1 11. During the course of Plaintiff and the Class Members' employment with
2 Defendants, they were not paid all wages they were owed despite being subject to Defendants
3 control (resulting in "off the clock" work) and for all their overtime hours worked, and they were
4 not paid at the required rates for overtime. This has resulted in systematic and ongoing violations
5 of the California Labor Code and relevant IWC Wage Orders. To the extent Plaintiff and Class
6 Members were paid on a piece-rate basis, they were not compensated for their real-time hours
7 worked performing tasks required of them by Defendants which did not generate pieces, along
8 with off-duty rest breaks and other times under Defendants' control where they could not
9 generate pieces. Specifically, Plaintiff and Class Members were not provided with minimum
10 wages for all their non-productive work time or time where pieces were not being generated, and
11 Defendants also failed to pay for non-productive rest break time as is required for employees paid
12 on a piece rate basis. Upon information and belief, Defendants subjected Plaintiff and the Class
13 Members to similar policies and practices which resulted in similar violations as to the other
14 similarly situated non-exempt employees based out of their locations and offices in California.

15 12. Plaintiff was paid bi-weekly by Defendants, and Plaintiff was informed by
16 Defendants in her initial paperwork and Notice under Labor Code 2810.5 that she was to be paid
17 an hourly rate of \$25/hr with an overtime rate of 1.5 times that (\$37.50). She was later informed
18 that she was to be paid at a piece rate of \$45 per visit to an assigned patient's location. Plaintiff
19 was generally scheduled for and conducted three to five visits per day and worked five to seven
20 days per week. Without counting preparatory and travel time for making her visits, and other non-
21 productive time for which she could not generate visits, Plaintiff generally worked eight to nine
22 hours per day, with her active shift times at patient locations generally spanning from 8:00 a.m.
23 through 4:00 p.m. On the vast majority of occasions, Plaintiff was therefore also required to work
24 shifts of longer than 8 hours, with most generally running longer and lasting for up to 10 hours or
25 more. However, Plaintiff was required by Defendants to endure further and substantial off the
26 clock hours worked and under Defendants' control without pay before, after, and in between the
27 time when she was with a patient and generating pieces from a scheduled visits.

28 13. Defendants' policy and practice of requiring systematic off the clock work flowed

1 in part from their failure to clearly define and communicate their compensation plan to Plaintiff
2 and the Class. According to the Notice to Employee Labor Code section 2810.5 form, Plaintiff
3 was compensated on an hourly basis at a rate of \$25/hr. Additionally, Plaintiff's wage statements
4 provided by Defendants indicate that Plaintiff was compensated under the "REGULAR" heading
5 on an hourly basis at a rate of \$45, \$40, \$15, or \$25, without regard to the difference in pay rates.
6 However, Plaintiff was also instructed by Defendants' that she was being compensated on a piece
7 rate basis at a rate of \$45 per visit and not on an hourly basis. Plaintiff was also provided with
8 Payroll Status Change form that confirms she was compensated on a piece rate basis at a rate of
9 \$45 per visit but also explains that she compensated at an hourly rate of \$25 per visit. Thus, to
10 whatever extent Defendants intended to compensate Plaintiff and the Class members on a hybrid
11 hourly and piece rate basis, Defendant may have intended to compensate Plaintiff at a rate of \$45
12 for each piece she generates or every visit she conducts and separately compensate Plaintiff at a
13 rate of \$25 per hour for work conducted for Defendants while she is not generating pieces ("non-
14 productive time"). However, the wage statements issued to Plaintiff fail to reflect a hybrid
15 method given that they fail to specify the amount of pieces generated and the rate. The wage
16 statements also fail to list any compensation to Plaintiff for the hours of non-productive time she
17 worked during each pay period or otherwise fails to clearly differentiate that she was
18 compensated for non-productive work. Nevertheless, regardless of the compensation method
19 Defendants utilized, Defendants failed to compensate Plaintiff for all hours worked or off the
20 clock work, and this is true whether they failed to do so for off the clock work on an hourly basis
21 and non-productive time on a piece rate basis.

22 14. To the extent Plaintiff and Class Members were paid an hourly rate, Defendants
23 utilized a consistent policy and practice of unlawfully rounding hours worked to the detriment of
24 the Class Members. Rather than paying Class Members for all hours and minutes they actually
25 worked, Defendants followed a uniform policy and practice of rounding all time entries to the
26 nearest quarter-hour or half-hour and generally did so to the detriment of the Class Members.
27 Plaintiff contends this policy is not neutral and over time resulted to the detriment of the Class
28 Members by systematically under-compensating them. Additionally, Defendants had the capacity

1 and systems in place to permit Defendants to pay Plaintiffs and the Class Members on an hourly
2 basis as non-exempt employees and to record if and when they were taking their required meal
3 and rest breaks, but they instead underpaid Plaintiffs and the Class Members under their
4 undefined and confusing compensation system.

5 15. Upon information and belief, Defendants difficult to explain, understand, and
6 apply compensation system was used to avoid paying Plaintiff and Class Members all their hours
7 worked, including all duly owed straight time, overtime, and double time for all hours worked,
8 and/or all non-productive time and non-productive rest and recovery time under a piece rate,
9 hourly rate, or hybrid compensation system. California Labor Code § 226.2(a)(1) states that, for
10 “employees compensated on a piece-rate basis during a pay period, . . . Employees shall be
11 compensated for rest and recovery periods and all other nonproductive time separate from any
12 piece-rate compensation.” Defendants failed to do so for Plaintiff and the Class Members when
13 they were paid on a piece rate basis, including by failing to comply with the other provisions of
14 Labor Code § 226.2 addressing the requirements for compensating employees for rest and
15 recovery periods and other non-productive time separate from straight piece rate compensation.

16 16. Defendants’ unlawful timekeeping procedures therefore also contributed to
17 Defendants’ policy and practice of requiring systematic off the clock work or of not
18 compensating for all pieces earned and all non-productive time. Defendants did not require
19 Plaintiff and her co-workers to contemporaneously record shift start and end times and meal
20 period beginning and end times, as required under the Labor Code. Instead, Defendants only
21 required their patients/customers to sign a paper declaring that Plaintiff completed the scheduled
22 visitation, and Defendants then used the declaration to calculate Plaintiff’s compensation.

23 17. Defendants also required Plaintiff to be prepared to begin work at her scheduled
24 visit start time, and she would be reprimanded if she was not on site and assisting her patients at
25 her scheduled start time. However, for Plaintiff to arrive at a visit location and start on time, she
26 had to prepare her vehicle for each visit prior to driving to her first patient’s location well before
27 her visit start time. Plaintiff’s first visit was generally scheduled at 8:00 a.m., and to be prepared
28 to start working, she had to begin preparing her vehicle approximately one hour prior to the visit

1 so she could check her vehicle and stock it with materials and supplies, such as boots, gloves,
2 gowns, shampoo, wash cloths, toiletries, etc. Defendants' compensation system did not account
3 for this preparation time and driving time, and Defendants owe substantial compensation to
4 Plaintiff and the Class members for systematic failure to pay for all hours worked and/or failure
5 to pay for all pieces generated and for all non-productive non-piece generating time she endured.

6 18. Defendants also failed to account and compensate for off-the-clock phone
7 conversations between Plaintiff and Defendants' managers regarding work related matters and
8 scheduling. Plaintiff frequently received calls and messages to her personal cellphone throughout
9 workdays, including during breaks and after work hours. Plaintiff particularly recalls using her
10 personal cell phone for monitoring and other work-related purposes for about 8-12 hours per day
11 on days where she was scheduled to work. Plaintiff was also required to work off the clock for a
12 couple of hours after her scheduled visits to begin planning the next day's route and charting her
13 notes of that day's patient visits.

14 19. Plaintiff and the Class Members performed these tasks but were not paid the
15 minimum wages to which they were entitled because of Defendants' systematic policies and
16 practices of failing to correctly record all time worked and compensate Employees at the correct
17 rates and for all hours worked, as detailed above. Defendants failed to correctly pay minimum
18 wages to Plaintiff and the other Class Members in accordance with California law, and thereby
19 systematically underpaid minimum compensation to Plaintiff and the other Class Members for
20 their time worked, which Defendants failed to document as also required under applicable
21 California law. Moreover, to the extent Plaintiff was paid on piece rate basis, Defendants failed to
22 compensate Plaintiff for all non-productive time when pieces were not being earned, as addressed
23 in detail above.

24 20. Defendants have either failed to maintain timekeeping records for Plaintiff that
25 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants
26 required and the actual hours Plaintiff worked or the breaks she received or have otherwise
27 declined to produce them to Plaintiff in response to a timely and lawful records request. By
28 failing to pay for all hours worked, and by under-recording regular hours to the detriment of the

1 Class Members, Defendants have committed knowing and intentional ongoing violations of the
2 record keeping requirements under the Labor Code, including section 1174, by either failing to
3 maintain records or retaining inaccurate ones.

4 21. Therefore, from at least four years prior to the filing of this lawsuit and continuing
5 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
6 hours worked and failing to pay minimum wages for all time worked. They also were not
7 compensated for all non-productive time when pieces were not being earned or for all non-
8 productive rest and recovery time, as required by California law. Also, from at least four years
9 prior to the filing of this lawsuit and continuing to the present, Defendants had a consistent policy
10 or practice of failing to pay Employees overtime compensation at premium overtime rates for all
11 hours worked in excess of eight hours a day and/or forty hours a week and double-time rates for
12 all hours worked in excess of twelve hours a day, in violation of Labor Code § 510 and the
13 corresponding sections of IWC Wage Orders. To the extent Defendant paid any overtime premium
14 wages for any hours worked by Plaintiff and the Class members, they failed to begin paying it
15 when owed due to pre-shift off the clock work, and upon information and belief, Defendants failed
16 to include all forms of remuneration in the regular rate used to calculate and pay overtime.

17 22. Defendants also failed to provide all legally required unpaid, off-duty meal periods
18 and all legally required paid, off-duty rest periods to Plaintiff and Class Members, as required by
19 the applicable Wage Orders and the Labor Code. Defendants did not have a policy or practice
20 which provided or recorded all the legally required unpaid, off-duty meal periods or which
21 authorized and permitted all legally required paid, off-duty rest periods to Plaintiff and Class
22 Members. Plaintiff and Class Members were non-exempt employees required to perform work as
23 ordered by Defendants for more than five (5) hours during a shift but were often required to do so
24 without receiving a lawful and timely meal break or were required to take shortened meal and rest
25 breaks, or none at all, in order to keep up with work demands and job duties and job requirements
26 and pressure placed upon them by Defendants' management and customers.

27 23. More specifically, Plaintiff worked shifts that entitled her to at least one meal
28 period, but as addressed above, Defendants failed to provide and schedule meal breaks throughout

1 Plaintiff's entire employment with Defendants. To whatever extent Plaintiff attempted to take a
2 meal break, it went by the wayside quickly as there always seemed to be demands from patients to
3 resolve or a phone call to take or a message to respond to. This led to systematically late meal
4 periods, if they were provided at all, and on-duty meal periods that were incessantly interrupted by
5 patient and management demands and required job duties and tasks to be performed and required
6 Employees to remain under Defendants' control during breaks.

7 24. Therefore, meal period violations systematically occurred ongoing throughout all
8 of Plaintiff's work shifts where Defendants both failed to provide a lawful meal period or penalty
9 payment. To the extent Defendants ever did pay Plaintiff a meal period premium, they failed to
10 include all forms of remuneration that should have been paid in the regular rate that it used to
11 calculate the rate at which overtime should have been paid. Upon information and belief, the other
12 Class Members were subjected to similar unlawful policies and practices and endured similar
13 violations as Plaintiff.

14 25. Defendants thus failed to provide all the legally required unpaid, off-duty meal
15 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
16 Members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
17 Members were required to perform work as ordered by Defendants for more than five hours
18 during a shift without receiving compliant meal periods. Additionally, as addressed above,
19 Defendants followed a practice of requiring off the clock work in a manner that would impact
20 when Employees were to receive meal periods and rest breaks and required them to respond to
21 work calls and inquiries and other demands during breaks, thus leading to further violations.

22 26. Defendants thus followed uniformly applied policies of not providing all required
23 meal periods to their Employees. Meal periods were not scheduled or properly provided, and even
24 on occasion where Plaintiff attempted to take a break, it was generally interrupted by work duties
25 or was taken after the fifth hour of work. Additionally, as addressed above, Defendants followed a
26 practice of requiring off the clock work in a manner that would impact when Employees were to
27 receive meal periods and rest breaks, thus leading to further violations.

28 27. As a result, Defendants' failure to provide Plaintiff and the Class Members with all

1 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
2 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants also
3 failed to pay Employees "premium pay," i.e., one hour of wages at each Employee's effective
4 regular rate of compensation for each meal period or rest break that Defendants failed to provide
5 or deficiently provided.

6 28. Therefore, for at least four years prior to the filing of this action and through to the
7 present, Plaintiff and the Class Members were unable to take off-duty breaks or were otherwise
8 not provided with the opportunity to take required breaks as required under the Labor Code and
9 Wage Orders due to Defendants' policies and practices. On the occasions when Plaintiff and the
10 Class Members were provided with a meal period, it was often untimely or interrupted, or was
11 impermissibly shortened, and Employees were not provided with one hour's wages in lieu thereof.
12 Meal period violations thus occurred in one or more of the following manners:

- 13 (a) Class Members were not provided full thirty-minute duty free meal periods
14 for work days in excess of five hours and were not compensated one hour's
15 wages in lieu thereof, or were not compensated at the correct regular rate
16 of compensation, all in violation of, among others, Labor Code §§ 226.7,
17 512, and the applicable Industrial Welfare Commission Wage Order(s);
- 18 (b) Class Members were not provided second full thirty-minute duty free meal
19 periods for work days in excess of ten hours;
- 20 (c) Class Members were required to work through at least part of their daily
21 meal period(s);
- 22 (d) Meal periods were provided after five hours of continuous work during a
23 shift; and
- 24 (e) Class Members were restricted in their ability to take a full thirty-minute
25 meal period.

26 29. Similar violations resulted from Defendants' failure to authorize and permit
27 Plaintiff and the Class Members to take duty-free, net ten minute rest breaks for every four hours
28 of shift work, or major fraction thereof. Plaintiff and the other similarly situated Class Members

1 were either not authorized permitted the opportunity to take a rest break or were required to
2 remain under Defendants' control and respond to calls and instructions from management and job
3 and customer demands if and when they even attempted to take one. Upon information and belief,
4 Defendants thus also failed to authorize and permit employees to leave the premises during rest
5 breaks, evidencing Defendants' policy and practice of requiring Plaintiff and the Class Members
6 to remain under their control during required off-duty rest break times.

7 30. Rest breaks were neither scheduled nor contemplated by Defendants. During
8 Plaintiff's entire employment duration with Defendants, she cannot recall a time when she took a
9 break, despite being entitled to receive at least two paid, timely, uninterrupted, and duty-free ten
10 minute rest breaks during each of her work shifts.

11 31. Defendants' uniformly applied policies and practices thus resulted in untimely and
12 shortened or on-duty rest breaks when Plaintiff attempted to take one. Plaintiff and the Class
13 Members worked shifts of at least eight hours, which required at least two rest breaks, and often
14 worked shifts over ten hours, which required at least three rest breaks. Plaintiff does not recall
15 receiving any rest breaks throughout her employment with Defendants.

16 32. During rest periods, employers must relieve employees of all duties and relinquish
17 control over how employees spend their time. Plaintiff and the Class Members were and are
18 under Defendants' control when they are working through rest breaks and remaining under
19 Defendants' control. Defendants failed to provide rest breaks, but in the event that Plaintiff
20 attempted to take one, the rest breaks were either impermissibly shortened or untimely meal and
21 rest breaks to Plaintiff and the Class Members. Plaintiff and the Employees in the Class were thus
22 not authorized and permitted to take lawful rest periods, were systematically required by
23 Defendants to work through or during breaks, and were not provided with one hour's wages in
24 lieu thereof. They were required to remain on-duty during breaks or portions of their breaks, thus
25 making them either untimely or shortened and on-duty, and they were also prevented from
26 leaving the premises and otherwise remain under Defendants' control during rest breaks under
27 Defendants' uniformly applied policies and practices. Rest period violations therefore arose in
28 one or more of the following manners:

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

9 33. From at least four (4) years prior to the filing of this lawsuit and continuing to the
10 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
11 deducting the Employees' earned wages, including by the above described off the clock work and
12 on-duty work while on unpaid meal breaks. Defendants have consistently and unlawfully collected
13 or received wages from Employees by not compensating Plaintiff and the Class Members for all
14 hours worked, including by rounding, by on-duty meal periods they were required to endure under
15 Defendants' policies and practices, and by not paying Employees paid on a piece rate basis for all
16 their non-productive time worked, including off-duty rest periods and recovery times. Defendants
17 thus unlawfully deducted wages earned by and owed to Plaintiff and the Class members, in
18 violation of Labor Code § 221.

19 34. Defendants also violated California Labor Code § 246 by not providing all
20 required paid sick days to Plaintiff and the Class Members. Labor Code § 246 provides that an
21 Employee who "works in California for the same employer for 30 or more days within a year
22 from the commencement of employment is entitled to paid sick days as specified in this section."
23 Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their
24 required and earned sick days, in violation of Labor Code § 246. Additionally and upon
25 information and belief, Defendants have failed to provide COVID-19 supplemental sick leave to
26 the Class Members during the relevant time period, including by failing to provide two work
27 weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and
28 248.2 and including damages and penalties as these sections are enforced through Labor Code §

1 248.5, which requires that: “If paid sick days were unlawfully withheld, the dollar amount of paid
2 sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250),
3 whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars
4 (\$4,000), shall be included in the administrative penalty.” Plaintiff accordingly seeks this relief
5 available for Defendants’ failure to provide Employees with all their required and earned sick
6 days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1,
7 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246,
8 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees
9 and costs pursuant to Labor Code § 2699(g)(1).

10 35. Additionally, Defendants consistently violated California Labor Code § 226.2
11 which establishes compensation and wage requirements for rest and recovery periods as well as
12 other non-productive time for piece rate employees. Particularly, subdivision (a), paragraphs (1)
13 and (3) provide that employees must be compensated for rest and recover periods “separate from
14 any piece compensation and that the compensation should be based on the higher of either: “an
15 average hourly rate determined by dividing the total compensation for the workweek, exclusive of
16 compensation for rest and recovery periods and any premium compensation for overtime, by the
17 total hours worked during the workweek, exclusive of rest and recovery periods” or “the
18 applicable minimum wage.” Defendants failed to compensate Plaintiff for rest and recovery breaks
19 as well as other non-productive time throughout her employment with Defendants.

20 36. Upon information and belief, Defendants also failed to provide Employees such as
21 Plaintiff at the time of her employment and thereafter with written notice complying with all the
22 requirements of Labor Code § 2810.5, which provides that: “At the time of hiring, an employer
23 shall provide to each employee a written notice, in the language the employer normally uses to
24 communicate employment-related information to the employee, containing” specific required
25 information. Labor Code § 2810.5(A) particularly requires that employers specify whether the
26 employee will be “paid by the hour by the hour, shift, day, week, salary, piece, commission, or
27 otherwise.” The Notice to Employee provided to Plaintiff failed to specify the rate in the wage
28 information section of the letter as required under Labor Code § 2810.5. Defendants failed to

1 provide Plaintiff with any such information when she was hired, or have failed to produce them,
2 and upon information and belief Defendants committed similar violations in connection with
3 similarly situated and aggrieved Class Members.

4 37. As a result of these illegal policies and practices, Defendants also engaged in and
5 enforced the following additional unlawful practices and policies against Plaintiff and the Class
6 Members she seeks to represent:

- 7 a. failing to pay all wages owed to Class Members who either were discharged, laid
8 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202,
9 203;
- 10 b. failing to pay all wages owed to the Class Members twice monthly in accordance
11 with the requirements of Labor Code § 204;
- 12 c. failing to pay Class Members all wages owed, including all meal and rest period
13 premium wages, and failing to pay them at the regular rate of compensation;
- 14 d. failing to maintain accurate records of Class Members' hours worked and earned
15 wages and meal periods in violation of Labor Code §§ 226 and 1174(d) and section
16 7 of the applicable IWC Wage Orders; and
- 17 e. failing to produce timekeeping records in response to Plaintiff's timely and lawful
18 request to receive them under these authorities.

19 38. From at least four (4) years prior to the filing of this lawsuit, and continuing to the
20 present, Defendants have also consistently failed to provide Employees with timely, accurate, and
21 itemized wage statements, in writing, as required by California wage-and-hour laws. More
22 specifically, Defendants also failed to provide the Plaintiff and the other members of the Class
23 with complete and accurate wage statements, as those provided failed to show, among other
24 things, the correct wages owed for time worked, including, allocation of lawfully required, paid,
25 and off-duty rest periods and other non-productive time. California Labor Code § 226 provides
26 that every employer shall furnish each of his or her employees with an accurate itemized wage
27 statement in writing showing, among other things, gross wages earned and all applicable hourly
28 rates in effect during the pay period and the corresponding amount of time worked at each hourly

1 rate, as well as the number of piece-rate units earned and any applicable piece rate for employees
2 who were paid on a piece-rate basis. The wage statements Defendants provided to the Employee in
3 the Class failed to list or to accurately list the wage rates or the hours worked at those rates or
4 pieces earned during the pay period which led to the calculated pay listed by Defendants without
5 any further detail.

6 39. Defendants have thus also failed to comply with Labor Code § 226(a) by
7 inaccurately reporting total hours worked and total wages earned by Plaintiff and the Class
8 Members, along with the appropriate applicable rates, among others requirements. Plaintiff and
9 Class Members are therefore entitled to penalties not to exceed \$4,000.00 for each employee
10 pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the
11 applicable California IWC Wage Orders by failing to maintain time records showing when the
12 employee begins and ends each work period, meal periods, and wages earned pursuant to Labor
13 Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from
14 payment of wages and accurately reporting total hours worked.

15 40. Defendants also required Plaintiff and the Class Members to work hours off the
16 clock for which they were not compensated, including uncompensated time before and after work
17 shifts or during non-productive time and rest and recovery periods and due to Defendants'
18 unlawful rounding an and during interrupted or otherwise on-duty meal and rest periods.
19 Defendants also failed to pay all overtime premium wages owed for work conducted on a work
20 shift and a workweek, as addressed above. Therefore, from at least four (4) years prior to filing
21 this lawsuit and continuing to the present, Defendants have also followed a uniform and consistent
22 policy of failing to pay all wages owed to Plaintiff and other similarly situated Employees at the
23 time of their termination or within seventy-two (72) hours of their resignation, as required by
24 California wage-and-hour laws. In view of the above addressed violations, Defendants have also
25 failed to pay all wages owed to Plaintiff and the Class members twice monthly in accordance with
26 the requirements of Labor Code § 204.

27 41. Additionally, from at least four years prior to the filing of this lawsuit and
28 continuing to the present, Defendants have regularly required Plaintiff and the Class Members to

1 incur necessary business expenses in the course of performing their required job duties without
2 reimbursement. These included the cell phone related expenses Plaintiff incurred in responding to
3 calls and texts from managers and in accessing the internet to use phone applications required by
4 Defendants. Defendants required that Plaintiff download the “Kinnser” application on her personal
5 cell phone to access electronic medical records, and the “TigerText” application required to
6 communicate with the company regarding Plaintiff’s assignments and schedule. Plaintiff’s pay
7 stubs fail to reflect reimbursed for personal cell phone.

8 42. Additionally, Plaintiff was also required to drive to patient and client locations
9 during work shift hours. Although, Defendants generally reimbursed her in the amount of \$0.24
10 per mile and \$0.54 per mile, Defendants failed to accurately reimburse her for mileage at the
11 legally required rate of \$0.585 per mile in 2022 and \$0.655 per mile in 2023. Moreover, Plaintiff
12 was also required to purchase protective gear and equipment such as gloves, masks, gowns, boots,
13 and hand sanitizer required for the job. Plaintiff recalls incurring well over \$500 for the required
14 protective gear, which Defendants failed to reimburse. Plaintiff also incurred business expenses
15 while working from home. Plaintiff was required to access the internet using her own personal
16 computer to complete her job responsibilities, and Defendants failed to reimburse Plaintiff for her
17 home internet use and personal computer expense. Plaintiff and the Class Members must be
18 reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants
19 systematically failed to do so.

20 43. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
21 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.2,
22 226.4, 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185,
23 1194, 1194.2 1197, 1198, 1198.5, 1199, 2802, 2698 *et seq.*, and California Code of Regulations,
24 Title 8, section 11000 *et seq.*

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

CLASS ALLEGATIONS

45. 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 (or “the Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as determined by the Court (“the Class Period”), and who have been employed as non-exempt employees within the State of California.” This includes all current and former non-exempt employees paid on an hourly basis, on piece rate basis, or a hybrid of the two, and includes those employed as certified home health aides, hospice aides, nurses, certified clinicians, and in similar and in similar and related positions. Further, Plaintiff seeks to represent the Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class members who were not compensated for all hours worked for Defendants and piece rate units or commissions at the applicable minimum wage.

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

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

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

e. Subclass 5. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements including the failure to include separate rest and recovery pay on wage statements.

1 f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members
2 who were subject to Defendants' policy and/or practice of deducting wages earned from their pay,
3 including by requiring off the clock work and underpaying piece rate units or commissions.

4 g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class
5 members who were subject to Defendants' policy and practice of not timely paying all wages
6 earned when they were due and payable at least twice monthly.

7 h. Subclass 8. Termination Pay Subclass. All Class members who, within the
8 applicable limitations period, either voluntarily or involuntarily separated from their employment
9 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
10 termination.

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

14 j. Subclass 10. Expense Reimbursement Subclass. All Class members who incurred
15 necessary and reasonable expenses in connection with performing their job duties for Defendants
16 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

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

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

24 47. Defendants, as a matter of company policy, practice and procedure, and in violation
25 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,
26 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
27 in a practice whereby Defendants failed to correctly calculate and pay compensation for the time
28 worked by Plaintiff and the other members of the Class, even though Defendants enjoyed the

benefit of this work, required Employees to perform this work and permitted or suffered to permit this work. Defendants have uniformly denied these Class members wages to which these employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in order to unfairly cheat the competition and unlawfully profit.

48. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure § 382 because there is a well-defined community of interest in this litigation and the proposed Class is easily ascertainable from the employment records for Plaintiff and the Class members that Defendants are required to maintain under California law.

A. Numerosity

49. The potential members of the Class as defined are so numerous that joinder of all the Class members is impracticable. While the precise number of Class member has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the time period relevant to this lawsuit employed, at least over 100 Employees who satisfy the Class definition within the State of California. Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all Class members.

B. Commonality

50. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class members. The common questions are numerous and substantial and flow from Defendants' uniform policies and/or practices of violating the California Labor Code addressed above. As such, these common questions predominate over individual questions concerning each individual Class Member's showing as to his or her eligibility for recovery or as to the amount of damages. These common questions of law and fact include:

- a. Whether Defendants failed to pay Employees minimum wages, including for all hours worked, piece rate units or commissions;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;

- d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Employees to take requisite rest breaks or cooldown periods or provide premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements and wage statements that omitted many of the Section 226(a) requirements.
- g. Whether Defendants violated Labor Code § 226.2 by failing to separately compensate Employees paid on a piece rate basis for their rest periods;
- h. Whether Defendants violated Labor Code § 221;
- i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- j. Whether Defendants' conduct was willful;
- k. Whether Defendants violated Labor Code § 226 and § 1174 and § 1198 and the IWC Wage Orders by failing to maintain accurate records of Class members' earned wages and work periods;
- l. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;
- n. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business expenses incurred by Employees;
- o. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not providing employees with all required sick days and COVID-19 supplemental sick leave;

- 1 p. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 2 q. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 3 r. Whether Employees are entitled to equitable relief pursuant to Business and
- 4 Professions Code § 17200 *et seq.*

5 **C. Typicality**

6 51. The claims of the named Plaintiff are typical of those of the other Employees. The

7 Employee Class members all sustained injuries and damages arising out of and caused by

8 Defendants' common course of conduct and uniformly applied policies in violation of statutes, as

9 well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for

10 the off the clock work and meal and rest violations they were required to endure are typical of

11 those of the other Class members.

12 **D. Adequacy of Representation**

13 52. Plaintiff will fairly and adequately represent and protect the interest of the

14 Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are

15 experienced and competent in litigating employment class actions.

16 **E. Superiority of Class Action**

17 53. A class action is superior to other available means for the fair and efficient

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

19 questions of law and fact common to all Employees predominate over any questions affecting only

20 individual Employees. Each Employee in the Class has been damaged and is entitled to recovery

21 by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

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

23 the fair and efficient adjudication of this controversy, as joinder of all Class members is

24 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class

25 members. Further, as the economic or other loss suffered by vast numbers of Class members may

26 be relatively small, the expense and burden of individual actions makes it difficult for the Class

27 members to individually redress the wrongs they have suffered. Moreover, in the event

28 disgorgement is ordered, a class action is the only mechanism that will permit the employment of

1 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
2 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
3 to vindicate their rights for violations they endured which they would otherwise be foreclosed
4 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

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

12 56. Defendants, as prospective and actual employers of the Employees in the Class,
13 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
14 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
15 Employees as well as the effect of any alleged arbitration agreements that may have been forced
16 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
17 and policies, most notably intentionally refusing to pay for all hours actually worked which should
18 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
19 agreements and policies and practices on the Employees and Class as a whole.

20 57. Plaintiff and the Employees in the Class did not discover the fact that they were
21 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
22 any discussion about Plaintiff's and the Class members' waiver of their Constitutional rights of
23 trial by jury, to collectively organize and oppose unlawful pay practices under California law as
24 well as obtain injunctive relief preventing such practices from continuing. As a result, the
25 applicable statutes of limitation tolled until such time as Plaintiff and the Class members
26 discovered their claims.

27 ///

28 ///

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Against All Defendants)

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

59. Defendants failed to pay Employees minimum wages for all hours worked or all pieces earned. Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees were not provided with minimum wages for all their non-productive work time, including for time during which pieces were not being generated, time spent waiting for assignments, and Defendants also failed to pay for non-productive rest break time as is required for employees paid on a piece rate basis. Employees would work hours and not receive wages, including as alleged above in connection with off the clock work, including all the time required to remain on duty and under Defendants' control during breaks and due to the work demands placed upon them by Defendants' management and patient and by the unlawful deduction of hours or by paying what should have been overtime hours as regular hours. Defendants' uniformly applied policies required systematic off the clock work and underpayment of all wages owed to Employees over a period of time, while benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum wages to Class Members, to their detriment. Additionally, Defendants had a consistent policy of failing to pay Class Members for hours worked during alleged meal and rest periods for which Class Members were consistently denied, as also addressed herein. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Class Members as to minimum wage pay.

60. In California, employees must be paid at least the applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Also, pursuant to California Labor Code § 204, other applicable laws and regulations, and public policy, an

1 employer must timely pay its employees for all hours worked. Defendants failed to do so.

2 61. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
3 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
4 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The
5 applicable minimum wage rate fixed by the commission for work during the relevant period is
6 found in the Wage Orders.

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

13 63. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
14 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
15 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
16 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
17 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
18 the absence of a contractually agreed upon one.

19 64. Additionally, California Labor Code § 226.2(a)(1) states that, for “employees
20 compensated on a piece-rate basis during a pay period, . . . Employees shall be compensated for
21 rest and recovery periods and all other non-productive time separate from any piece-rate
22 compensation.” Defendants failed to do so for Plaintiff and the Class Members when they were
23 paid on a piece rate basis, including by failing to comply with the other provisions of Labor Code
24 § 226.2 addressing the requirements for compensating employees for rest and recovery periods
25 and other non-productive time separate from piece rate compensation. Employees were paid on a
26 piece rate basis. However, Defendants failed to separately pay Employees for their rest periods, at
27 least for the majority of the Class period, in violation of Labor Code § 226.2 and California
28 minimum wage laws, discussed above.

1 65. In committing these violations of the California Labor Code, Defendants
2 inaccurately recorded, or required Plaintiff and the Class Members to input times that did not
3 reflect their actual hours worked, or miscalculated hours or rates or otherwise underpaid the actual
4 time worked by Plaintiff and other members of the Class, including by requiring off the clock
5 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of
6 all earned wages, and other benefits in violation of the California Labor Code, the Industrial
7 Welfare Commission requirements and other applicable laws and regulations. As a result of these
8 violations, Defendants also failed to timely pay all wages earned in accordance with California
9 Labor Code § 1194.

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

14 67. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
15 1197.1, Plaintiff and Class Members are entitled to recover a penalty of \$100.00 for the initial
16 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
17 pay each employee minimum wages.

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

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

24 70. Plaintiff and the Class Members are entitled to recover the unpaid minimum wages
25 (including double minimum wages) and local wage ordinance wages and liquidated damages in an
26 amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s
27 fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other
28 members of the Class further request recovery of all unpaid wages, according to proof, interest,

1 statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as
2 provided by the California Labor Code and/or other applicable statutes. To the extent minimum
3 wage compensation is determined to be owed to the Class Members who have terminated their
4 employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore
5 these individuals are also be entitled to waiting time penalties under California Labor Code § 203,
6 which penalties are sought herein on behalf of these Class Members. Defendants' failure to timely
7 pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code §
8 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as
9 alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Class
10 Members are entitled to seek and recover statutory costs.

11 **SECOND CAUSE OF ACTION**

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

13 **(Against All Defendants)**

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

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

22 73. By their conduct, as set forth herein, Defendants violated California Labor Code §
23 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial
24 Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates
25 for hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in any
26 workweek or for the first eight (8) hours worked on the seventh day of work in any one
27 workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in
28 any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a

1 workweek.

2 74. Defendants had a consistent policy of not paying Employees wages for all hours
3 worked, including by requiring off the clock work as addressed above, by unlawful deductions, by
4 under-reporting actual hours worked, and by requiring Employees to do so as well. Plaintiff's
5 paystubs also show deductions for "NON-TAXABLE MILEAGE." Plaintiff does not know what
6 this deduction is for and does not recall ever consenting to such deduction. Defendants have also
7 failed to include all forms of remuneration in the regular rate of pay used to calculate and pay
8 overtime and failed to begin paying overtime when it was incurred due to the off the clock work,
9 as detailed above.

10 75. Defendants thus had a consistent policy of not paying Employees wages for all
11 hours worked, including hours at their required regular, overtime, and double-time rates.
12 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted
13 and/or modified certain employees' hours, including Plaintiff's or required Plaintiff and the Class
14 Members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and
15 the Class Members all earned and owed straight time and overtime wages and other benefits, in
16 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
17 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
18 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt
19 employees to work through meal periods or remain under Defendants' control when they were
20 required to be clocked out or to otherwise work off the clock to complete their daily job duties and
21 respond to demands from patients and managers.

22 76. Therefore, Employees were not properly compensated, nor were they paid overtime
23 rates for hours worked in excess of eight hours in a given day, and/or forty hours in a given week.
24 Based on information and belief, Defendants did not make available to Employees a reasonable
25 protocol for correcting time records when Employees worked overtime hours or to fix incorrect
26 time entries or those that Defendants unlawfully under-recorded to the Employee's detriment.
27 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated
28 Class Members to work through meal periods when they were required to be clocked out or to

1 otherwise work off the clock to complete their daily job duties.

2 77. Defendants' failure to pay Plaintiff and the Class Members the unpaid balance of
3 regular wages owed and overtime compensation for all hours worked, as required by California
4 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
5 IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly calculate the
6 regular rate used to calculate and pay overtime, and meal and rest premiums, as addressed above.

7 78. Additionally, Labor Code § 558(a) provides "any employer or other person acting
8 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
9 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
10 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
11 pay period for which the employee was underpaid in addition to an amount sufficient to recover
12 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
13 underpaid employee for each pay period for which the employee was underpaid in addition to an
14 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
15 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in
16 this section are in addition to any other civil or criminal penalty provided by law." Defendants
17 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
18 Wage Orders. Accordingly, Plaintiff and the Class Members seek the remedies set forth in Labor
19 Code § 558.

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

26 80. Employees have been damaged by these violations of California Labor Code §§
27 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
28 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less

1 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
2 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
3 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
4 any order or ruling of the commission.”

5 81. Consequently, pursuant to the California Labor Code, including Labor Code §§
6 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
7 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
8 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
9 their reasonable attorneys’ fees and costs, as well as the assessment of any statutory penalties
10 against Defendants, and each of them, and any additional sums as provided by the Labor Code
11 and/or other statutes.

12 **THIRD CAUSE OF ACTION**

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

14 **(Against All Defendants)**

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

17 83. Employees regularly worked shifts greater than five (5) hours and in some
18 instances, greater than ten (10) hours. Pursuant to Labor Code § 512, and paragraph 11 of the
19 applicable IWC Wage Order, an employer may not employ someone for a shift of more than five
20 (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or
21 for a shift of more than ten (10) hours without providing him or her with a second meal period of
22 not less than thirty (30) minutes.

23 84. Defendants failed to provide Employees with meal periods as required under the
24 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees did not have
25 scheduled meal periods. Employees were often required to work or to otherwise remain under
26 Defendants’ control during meal periods, or Defendants provided them after Employees worked
27 beyond the fifth hour of their shifts or Employees otherwise had them shortened and interrupted
28 by work demands and requirements to perform off the clock work and remain under Defendants’

1 control. Defendants also unlawfully combined meal periods with rest breaks. Furthermore, upon
2 information and belief, on the occasions when Employees worked more than ten hours in a given
3 shift, they did so without receiving a second uninterrupted thirty-minute meal period as required
4 by law.

5 85. Defendants thus failed to provide Plaintiff and the Class Members with meal
6 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
7 including by not providing them with the opportunity to take meal breaks, by providing them late
8 or for less than thirty minutes, or by requiring them to perform work during breaks.

9 86. Moreover, Defendants failed to compensate Employees for each meal period not
10 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
11 20 of the applicable IWC Wage Orders. These sections provide that if an employer fails to provide
12 an employee a meal period in accordance with applicable law, the employer shall pay the
13 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
14 that the meal period is not provided. To the extent Defendants did make any such payments to
15 Plaintiff and Class Members, they failed to do so for the vast majority of the violations.
16 Defendants failed to compensate Employees for each meal period not provided or inadequately
17 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC
18 Wage Order.

19 87. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
20 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
21 to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or
22 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory
23 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and
24 other statutes and applicable IWC Wage Order paragraphs.

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1 **FOURTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

9 90. Employees consistently worked consecutive four hour shifts and were generally
10 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
11 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
12 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
13 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
14 breaks of not less than ten minutes for each consecutive four hour shift. Defendants made no effort
15 to schedule or otherwise authorize and permit Plaintiff and the Class Members to take lawful rest
16 breaks. Employees were often required to work or to otherwise remain under Defendants' control
17 during rest periods, including by responding to work requirements, and had breaks provided
18 untimely as a result of the above described off the clock work. Plaintiff and the Class Members
19 were also not permitted to leave their work premises during rest breaks.

20 91. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage
21 Orders provide that if an employer fails to provide an employee rest period in accordance with this
22 section, the employer shall pay the employee one hour of pay at the employee's regular rate of
23 compensation for each workday that the rest period is not provided. Defendants failed to do so.

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

27 93. Defendants failed to authorize and permit Plaintiff and the Class Members to take
28 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees

1 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
2 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
3 12 and 20 of the applicable IWC Wage Orders.

4 94. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
5 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one hour
6 of wages at their effective hourly rates of pay for each day worked without the required rest
7 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
8 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

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

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

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

21 97. Defendants failed to provide Plaintiff and the similarly situated Employee Class
22 Members with accurate itemized wage statements in writing, as required by the Labor Code and
23 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to
24 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
25 including for all overtime and double time hours worked and for deficient meal periods and rest
26 breaks, all of which Defendants knew or reasonably should have known were owed to the
27 Employees, as alleged above.

28 98. Throughout the liability period, Defendants intentionally failed to furnish to

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

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

28 100. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers

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

8 101. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
9 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
10 Class suffered injuries, including among other things confusion over whether they received all
11 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
12 them to make mathematical computations to analyze whether the wages paid in fact compensated
13 them correctly for all hours worked.

14 102. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
15 IWC Wage Order, Plaintiff and the Employee Class Members are entitled to recover the greater of
16 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
17 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
18 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to
19 an award of costs and reasonable attorneys’ fees.

20 **SIXTH CAUSE OF ACTION**
21 **VIOLATION OF LABOR CODE § 221**
22 **(Against All Defendants)**

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

25 104. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or
26 receive from an employee any part of wages theretofore paid by said employer to said employee.”
27 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
28 public policy, an employer must timely pay its employees for all hours worked. Defendants failed

1 to do so.

2 105. Defendants unlawfully received and/or collected wages from Class Members by
3 implementing a policy of automatically deducting vested wages for meal periods that were not
4 provided, as well as by rounding down and understating the hours worked by Employees and
5 failure to pay all wages by not paying for all pieces or commissions earned or by underpaying
6 overtime by not including bonuses in the calculation, as addressed in detail above.

7 106. As a direct and proximate cause of the unauthorized deductions, Employees have
8 been damaged, in an amount to be determined at trial.

9 **SEVENTH CAUSE OF ACTION**
10 **VIOLATION OF LABOR CODE § 204**
11 **(Against All Defendants)**

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

14 108. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
15 employment are due and payable twice during each calendar month, on days designated in
16 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
17 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
18 during which the labor was performed, and labor performed between the 16th and the last day,
19 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
20 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment of
21 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
22 calendar days following the close of the payroll period.” As detailed above, Defendants
23 maintained a consistently applied policy and practice of not paying all wages earned between the
24 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
25 between the 16th and the last day of the month between the 1st and 10th day of the following month.
26 Defendants similarly failed to pay all wages earned by not more than seven calendar days
27 following the close of the payroll period.

28 109. All wages due and owing to Plaintiff and the Class Members, including as required

1 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
2 required by Labor Code § 1194 and other sections became due and payable to each employee in
3 each pay period that he or she was not provided with a meal period or rest period or paid straight
4 or overtime wages to which he or she was entitled.

5 110. Defendants violated Labor Code § 204 by systematically refusing to timely pay
6 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
7 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
8 payday for the period involved, not less than the applicable minimum wage for all hours worked in
9 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
10 hours than those fixed by the order or under conditions of labor prohibited by the order is
11 unlawful.” Plaintiff and the Class Members may therefore pursue damages and penalties for
12 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
13 penalties under paragraph 20 of the applicable IWC Wage Orders.

14 111. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
15 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
16 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
17 pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
18 applicable IWC Wage Orders.

19 **EIGHTH CAUSE OF ACTION**
20 **VIOLATION OF LABOR CODE § 203**
21 **(Against All Defendants)**

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

24 113. Plaintiff and numerous Class Members are no longer employed by Defendants;
25 they either quit Defendants’ employ or were fired therefrom.

26 114. Defendants failed to pay these Employees all wages due and certain at the time of
27 termination or within seventy-two hours of resignation.

28 115. The wages withheld from these Employees by Defendants remained due and owing

1 for more than thirty days from the date of separation from employment. Additionally, Defendants
2 failed to pay Plaintiff her final check at the time of her termination.

3 116. Defendants thus failed to pay Plaintiff and the Class Members without abatement,
4 all wages as defined by applicable California law. Among other things, these Employees were not
5 paid all regular and overtime wages, including by Defendants failing to pay for all hours worked
6 or requiring off the clock work or by unlawfully under-recording time entries to the detriment of
7 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and
8 rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the
9 required time was willful within the meaning of Labor Code § 203.

10 117. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
11 are required "to pay each employee, on the established payday for the period involved, not less
12 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
13 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
14 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class Members
15 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
16 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
17 IWC Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and
18 Defendants are subject to a fine of not less than \$100 for causing Employees "to work for longer
19 hours than those fixed, or under conditions of labor prohibited by an order of the commission" or
20 if the employer pays "a wage less than the minimum fixed by an order of the commission" or
21 "violates...any provision of this chapter or any order or ruling of the commission."

22 118. Defendants' failure to pay wages, as alleged, entitles Plaintiff and these former
23 Employee Class Members to penalties under Labor Code § 203 and the applicable paragraphs of
24 the IWC Wage Orders as addressed above, including the requirement that an employee's wages
25 shall continue until paid for up to thirty (30) days from the date they were due.

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1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS, LABOR CODE §§ 1174, 1174.5**

3 **(Against All Defendants)**

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

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

10 121. During the course of Plaintiff's and Employees' employment, Defendants
11 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as
12 required by California Labor Code § 1174 by failing to pay them proper wages, overtime, and
13 premium pay as discussed above and failing to document and pay for actual hours worked.

14 122. Defendants are also required by the California Labor Code § 1198 and the
15 applicable Wage Order to maintain a tracking system that accurately records the times during
16 which Employees work.

17 123. Defendants have maintained a common unlawful policy and practice of failing to
18 accurately record all hours worked and all meal period start and end times and by adjusting or
19 otherwise rounding and shaving them down. Defendants also manipulated timekeeping records to
20 reflect less time worked or to shift time to avoid premiums or to unlawfully deduct PTO/sick time
21 from Plaintiff and the Class Members.

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

24 125. Accordingly, Defendants are liable for civil penalties pursuant to the California
25 Labor Code including § 1174.5, for the three years prior to the filing of this Complaint.

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1 **TENTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES LABOR CODE § 2802**

3 **(Against All Defendants)**

4 126. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 127. Plaintiff is informed and believes and based thereon alleges that throughout the
7 period applicable, Defendants required Plaintiff and the Class Members to pay for necessary work
8 related expenses they incurred, including expenses required for Plaintiff to work from home.
9 Defendants also required Plaintiff and the Class Members to use their cellular phones to conduct
10 work related business and failed to accurately reimburse for mileage, as addressed above.
11 Additionally, Defendants required Plaintiff and Class Members to incur expenses for protective
12 gear and equipment required for the job as addressed above. Plaintiff and the Class Members must
13 be reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants
14 systematically failed to do so.

15 128. Defendants thus followed a uniform policy and practice of failing to reimburse
16 Employees for these necessary work related expenses or losses incurred in direct discharge of their
17 job duties during employment with Defendants and at the direction of the Defendants pursuant to
18 Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

19 129. Defendants' knowing and willful failure to reimburse lawful necessary work related
20 expenses and losses to Plaintiff and the Class Members resulted in damages because, among other
21 things, Defendants did not inform employees of their right to be reimbursed for those work related
22 expenses. As Defendants failed to inform and misled Plaintiff and the Class Members with regard
23 to their rights, Plaintiff and the Class Members were led to believe that incurring those lawful and
24 necessary expenses was an expected and essential function of their employment with Defendants
25 and that failure to incur those expenses would have adverse consequences on their employment.

26 130. Therefore, Plaintiff and the Class Members are entitled to reimbursement for any
27 and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9
28 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while

1 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed
2 from the date Plaintiff and the Class Members incurred those expenses. Further, Plaintiff and the
3 Class Members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

4 **ELEVENTH CAUSE OF ACTION**
5 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***
6 **(Against All Defendants)**

7 131. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
8 in full herein. Plaintiff, on behalf of herself, the Employees in the Class, and the general public,
9 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
10 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
11 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
12 the public interest within the meaning of Code of Civil Procedure § 1021.5.

13 132. Plaintiff is a "person" within the meaning of Business & Professions Code
14 § 17204, has suffered injury, and therefore has standing to bring this cause of action for
15 injunctive relief, restitution, and other appropriate equitable relief.

16 133. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
17 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
18 fraudulent in that Defendants' policy and practice failed to provide the required amount of
19 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
20 Class Members for all hours worked, due to systematic business practices as alleged herein that
21 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
22 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
23 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
24 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

25 134. Wage-and-hour laws express fundamental public policies. Paying employees their
26 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
27 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
28 vigorously to enforce minimum labor standards, to ensure that employees are not required or

1 permitted to work under substandard and unlawful conditions, and to protect law-abiding
2 employers and their employees from competitors who lower costs to themselves by failing to
3 comply with minimum labor standards.

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

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

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

16 138. By the conduct alleged herein, Defendants have engaged and continue to engage in
17 a business practice which violates California and federal law, including but not limited to, the
18 applicable Industrial Wage Order(s), the California Code of Regulations, and the California
19 Labor Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this
20 Court should issue declaratory and other equitable relief pursuant to California Business &
21 Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to
22 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

1 deceptive practice prohibited by the Business & Professions Code, including but not limited to
2 the disgorgement of such profits as may be necessary to restore Employees to the money
3 Defendants have unlawfully failed to pay.

4 **TWELTH CAUSE OF ACTION**

5 **PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.***

6 **(Against All Defendants)**

7 141. Plaintiff realleges and incorporate all preceding paragraphs, as though set forth in
8 full herein.

9 142. Plaintiff and the Employees in the Class are also aggrieved employees as defined
10 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and
11 either were or are employed by Defendants (“Aggrieved Employees”) during the relevant time
12 period.

13 143. In failing to pay Aggrieved Employees minimum wages and overtime, not
14 providing proper meal and rest periods, failing to provide accurate itemized wage statements, and
15 failing to pay Employees wages upon termination or timely upon resignation, all discussed above,
16 Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required
17 under Labor Code § 204. Defendants also failed to maintain records showing accurate hours
18 worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and
19 paragraph 7 of the applicable IWC Wage Orders.

20 144. As such, Employees seek wages and penalties under Labor Code §§ 2698 and
21 2699 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5,
22 including the penalty provisions, without limitation, based, inter alia, on the following California
23 Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512, 558, 1174,
24 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 et seq.

25 145. More specifically, after complying with the notice procedures of Labor Code §
26 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
27 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above
28 addressed underlying claims and seeking penalties as specified by the applicable corresponding

provisions, including as follows:

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent

1 citation, ...”;

2 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
3 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
4 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
5 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
6 of the applicable IWC Wage Orders, and also for attorneys’ fees and costs pursuant to Labor Code
7 § 2699(g)(1);

8 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
9 Defendants’ unlawful deductions from wages and for Defendants’ failure to reimburse the
10 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
11 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
12 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
13 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys’ fees and costs
14 pursuant to Labor Code § 2699(g)(1);

15 (f) All Alleged Violations of the IWC Wage Orders and Other Labor Code
16 Sections: For any above addressed violation of the applicable provisions of the IWC Wage
17 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §
18 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and
19 paragraph 20 of the applicable IWC Wage Orders, and for attorneys’ fees and costs pursuant to
20 Labor Code § 2699(g)(1).

21 146. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also
22 seeks the penalties and remedies set forth in Labor Code § 558, which states:

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

28 (b) If upon inspection or investigation the Labor Commissioner determines that a
person had paid or caused to be paid a wage for overtime work in violation of any provision of this

chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

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

147. Plaintiff has exhausted her administrative remedies by submitting a certified letter to the LWDA and Defendants on November 16, 2023 (LWDA-CM-994761-23) addressing in detail the specific provisions of the Labor Code Defendants have violated and addressing the facts and legal theories to support the alleged violations and requested penalties. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed herein and in the PAGA Notice letter and the original Complaint.

RELIEF REQUESTED

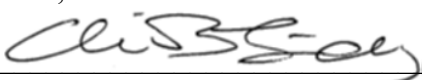
WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. 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;
6. 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;

7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
8. For restitution and/or damages and penalties for Defendants' failure to pay all wages due twice monthly under Labor Code § 204, as may be proven;
9. For restitution and/or damages for all amounts unlawfully withheld from the wages for all Class Members in violation of Labor Code § 221, 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 § 1174.5, as may be proven;
12. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;
13. For damages and restitution for failure to reimburse all reasonable and necessary business expenses incurred by Employees as required by Labor Code § 2802, 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 penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;
16. For penalties under Labor Code § 558, as may be proven;
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 other wages and penalties under the Labor Code as may be proven;
19. For all general, special, and incidental damages as may be proven;
20. For an award of pre-judgment and post-judgment interest;
21. For an award providing for the payment of the costs of this suit;
22. For an award of attorneys' fees; and
23. For such other and further relief as this Court may deem proper and just.

DATED: January 22, 2024

D.LAW, INC.

By 

David Yeremian
Alvin B. Lindsay
Melissa Rodriguez
Attorneys for Plaintiff Adelaida N.
Salangsang and all others similarly situated

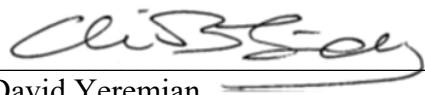
DEMAND FOR JURY TRIAL

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

DATED: January 22, 2024

D.LAW, INC.

By



David Yeremian

Alvin B. Lindsay

Melissa Rodriguez

Attorneys for Plaintiff Adelaida N.

Salangsang and all others similarly situated

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

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

On January 22, 2024, I served the foregoing: **FIRST AMENDED COMPLAINT** on Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Ilya Filmus

ifilmus@infinitylawca.com

Katerina Vratti

kvratti@infinitylawca.com

Eddie Donnelly

edonnelly@infinitylawca.com

Antonio Cortés

acortes@infinitylawca.com

Infinity Law Group

1020 Aileen St.

Lafayette, CA 94549

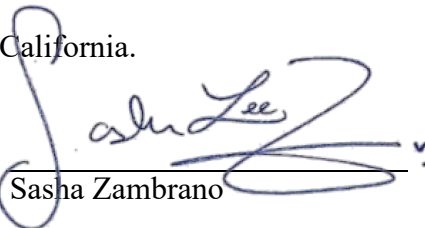
☐ **(BY MAIL)** I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary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

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

☒ **(BY ELECTRONIC SERVICE)** I caused the document(s) described herein to be served on the person(s) noted above by electronic mail to their E-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. [Pursuant to Civil Code Procedure 1010.6]

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

Executed on January 22, 2024, at Glendale, California.


Sasha Zambrano