

1 D.LAW, INC.
2 Emil Davtyan (SBN 299363)
3 emil@d.law
4 David Yeremian (SBN 226337)
5 d.yeremian@d.law
6 Alvin B. Lindsay (SBN 220236)
7 a.lindsay@d.law
8 Tania Fonseca (SBN 309927)
9 t.fonseca@d.law
10 880 E Broadway
11 Glendale, CA 91205
12 Telephone: (818) 962-6465
13 Facsimile: (818) 962-6469

14 Attorneys for Plaintiff CHANEL VICK
15 on behalf of herself and all others similarly situated

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF SAN BERNARDINO**

18 CHANEL VICK an individual, on behalf of
19 herself and others similarly situated,

20 Plaintiff,

21 vs.

22 MONTCLAIR MANOR CARE CENTER,
23 LLC, a California limited liability company;
24 and DOES 1 through 50, inclusive,

25 Defendants.

Case No.: CIVSB2329280

CLASS ACTION

Assigned for All Purposes To:

Hon. John M. Pacheco

Dept.: S31

**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 8, 2023

1/12/2024 10:30 AM

By: Mariah Mora, DEPUTY

1 Plaintiff CHANEL VICK (hereinafter “Plaintiff”), on behalf of herself and other similarly
2 situated non-exempt, hourly employees employed by Defendants in California during the relevant
3 period (collectively, “Employees”; individually, “Employee”), complains of Defendants, and each
4 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, hourly employees, including as Certified
9 Nursing Assistants (CNAs), Licensed Vocational Nurses (LVNs), caregivers, resident aids and in
10 similar and related positions, by Defendants MONTCLAIR MANOR CARE CENTER, LLC a
11 California limited liability company; and DOES 1 through 50, inclusive (all defendants being
12 collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each of
13 them, violated various provisions of the California Labor Code, relevant orders of the Industrial
14 Welfare Commission (“IWC”), and the California Business & Professions Code, and seeks redress
15 for these violations.

16 2. Plaintiff and the Class members worked as hourly, non-exempt Employees for
17 Defendants, including as Certified Nursing Assistants (CNAs), Licensed Vocational Nurses
18 (LVNs), caregivers, resident aids, and in similar and related positions pertaining to providing
19 skilled nursing care and rehabilitation services to Defendants’ customer patients at Defendants’
20 communities in California. Plaintiff, and upon information and belief other similarly situated
21 Employees, were required to perform work tasks based out of Defendants’ skilled nursing and
22 rehabilitation facilities in California. Plaintiff was employed by Defendants as a CNA with duties
23 that included assisting with bathing, grooming, toileting, dressing, oral care, ambulation, transfers,
24 serving and assisting with meals, feeding, housekeeping, bed making and laundry.

25 3. Defendants employed other similarly situated Class members as Certified Nursing
26 Assistants (CNAs), Licensed Vocational Nurses (LVNs), caregivers, resident aids, and in similar
27 and related positions in connection with their skilled nursing and rehabilitation facilities located
28 throughout California, including in San Bernardino County. Plaintiff and the other similarly

1 situated Class members worked at Defendants' behest without being paid all wages due and
2 without being provided all required breaks. More specifically, Plaintiff and the other similarly
3 situated Class members were employed by Defendants and (1) shared similar job duties and
4 responsibilities (2) were subjected to the same policies and practices (3) and endured similar
5 violations at the hands of Defendants as the other Employee Class members who served in similar
6 and related positions.

7 4. Defendants required Plaintiff and the Employees in the Class to work off the clock
8 and failed to record accurate time worked by these Employees, failed to pay them at the
9 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
10 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that
11 prevented them from learning of these unlawful pay practices. Defendants also failed to provide
12 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain
13 under Defendants' control and were not provided with the opportunity to take full uninterrupted
14 and duty-free rest periods and meal breaks, as required by the Labor Code and the applicable
15 paragraphs of the IWC Wage Orders.

16 5. Defendant MONTCLAIR MANOR CARE CENTER, LLC is a California limited
17 liability company which lists its principal address with the California Secretary of State in
18 Montclair, California. It lists several registered corporate agents who list addresses in Sacramento,
19 California and in Sacramento County. MONTCLAIR MANOR CARE CENTER, LLC lists its
20 type of business as "Skilled nursing facility." Defendant MONTCLAIR MANOR CARE
21 CENTER, LLC is listed as the employer on the wage statements issued to Plaintiff by Defendants,
22 and upon information and belief to other Class members, with the same Montclair address. The
23 website for MONTCLAIR MANOR CARE CENTER, LLC explains: "Our professional staff is
24 committed to give excellent care to our patients and maintain a safe and compassionate
25 environment. We ensure that our residents are comfortable and highly satisfied by providing a
26 various range of services including: Healthcare Facility Administration and consultation[;]
27 Rehabilitation services physical, occupational, and speech therapy[;]Rehabilitation consulting[;]
28 24-hour skilled nursing care[;] Activity and social programs[.]"

1 6. This Court has jurisdiction over this Action pursuant to California Code of Civil
2 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
3 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
4 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
5 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
6 obligations and liabilities giving rise to this lawsuit occurred, at least in part in San Bernardino
7 County. Defendants also employ and employed Class members at their communities and facilities
8 in San Bernardino County and throughout California.

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

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

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FACTUAL BACKGROUND

9. 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 were subjected to unlawful rounding and time shaving or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class members all wages due and owing, including by requiring off the clock work, failed to provide meal and rest breaks, and failed to furnish accurate wage statements, all in violation of various provisions of the California Labor Code and applicable paragraphs of the IWC Wage Orders.

10. During the course of Plaintiff and the Class members’ employment with Defendants, they were not paid all wages they were owed, including for all work performed (resulting in “off the clock” work) and for all their overtime hours worked and were subjected to unlawful rounding, and they were not paid at the required rates for overtime. This has resulted in systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-exempt, hourly employees as Certified Nursing Assistants (CNAs), Licensed Vocational Nurses (LVNs), caregivers, resident aids, and in similar and related positions based out of their facilities in California.

11. Plaintiff was employed by Defendants as a Certified Nursing Assistant (CNA) at Defendants’ Montclair, California facility. Plaintiff generally worked 16-24 hours per week, three days per week, which resulted in shifts of approximately eight hours in duration. Plaintiff worked different shifts during her employment, including those scheduled from 3:00 p.m. to 11:00 p.m. or 11:00 p.m. to 7:00 a.m., or longer.

12. Defendants’ Montclair facility included timekeeping systems incorporating electronic recording of time punches by Employees scanning their fingers on a time clock. The single time clock was located inside, near the entrance of the building, and purported to record

1 Employees' timekeeping entries with accuracy to the minute. However, in order to access the
2 time clock, Plaintiff would have to go through a series of time-consuming work-related
3 procedures that did not allow Employees to record their start time immediately upon commencing
4 work or when they were otherwise under Defendants' control.

5 13. For security reasons, after 7:00 p.m., the facility's doors are locked and require a
6 staff member to open them. As a result, incoming Employees must ring a doorbell and wait for a
7 staff member to unlock the door. Employees could expect to wait five to ten minutes outside of
8 the building while a staff member arrived to open the doors. Upon being admitted, Employees'
9 foreheads are scanned by a staff member with a thermometer. They must also fill out a COVID-
10 19 questionnaire with screening questions such as whether the Employee is feeling sick,
11 experiencing nausea, fever, or chills, and whether they have been around anyone with COVID.
12 After being scanned and filling out the questionnaire, Employees must sign a book stating they
13 were scanned and complied with COVID screening procedures. This process could take an
14 additional five to ten minutes to complete. Only after these steps were completed could
15 Employees access the electronic time clock to scan their fingerprints and record their entries.
16 Between Employees' arrival at the facility's entrance and their actual clocking-in, ten to twenty
17 minutes would generally elapse that were not recorded in Defendants' timekeeping system as
18 hours worked and thus not compensated by Defendants.

19 14. Additionally, Defendants require Employees to record their half-hour meal periods
20 through the time clock. However, due to the heavy workload, Plaintiff was compelled to perform
21 work during her meal periods, for example to assist patients. Moreover, due to Defendants'
22 practice of locking the facility's doors after 7:00 p.m., anytime Plaintiff took her meal period
23 outside the facility, she was compelled to shorten it by several minutes to ensure she would ring
24 the doorbell and wait for the doors to be opened so that she could record the return from her meal
25 period at exactly thirty minutes. Thus, Plaintiff's meal periods were interrupted and/or shortened,
26 and she was forced to work off the clock and otherwise remain under Defendants' control during
27 her meal periods.

28 15. Defendants' timekeeping violations were not limited to requiring Employees to

1 complete off-the-clock work. Defendants required Employees to be prepared to begin work at
2 their scheduled shift start times or they would face disciplinary action. However, Employees were
3 also instructed not to clock in more than ten minutes early to avoid overtime. Accordingly, some
4 Employees were required to wait around the time clock to scan their entry just before their
5 scheduled start time. Moreover, despite Defendants' timekeeping system purporting to record
6 Employees' exact start time, end time, and meal period times, Plaintiff routinely noticed that her
7 payroll records reflected rounded or shaved hours and did not precisely reflect all the minutes and
8 hours she had worked. In addition, whenever Plaintiff endured a late meal period and her time
9 records recorded a late meal, Defendants would require Plaintiff to modify her meal period entry
10 to an earlier time so that the meal period would appear compliant and Defendants could avoid
11 paying her a meal premium.

12 16. The failure to maintain accurate timekeeping records perpetrated by Defendants
13 has also been exacerbated by other off the clock work Defendants required their Employees to
14 endure. For example, Defendants required in-service meetings of approximately one hour each
15 that occurred before Plaintiff's scheduled shifts. During these meetings, Employees were not
16 permitted to record their time entries and they were off the clock while under Defendants'
17 control. Thus, Defendants failed to compensate Employees for these off the clock hours as well.
18 Plaintiff and the Class members were also required to work or otherwise remain under
19 Defendants' control after their shift end times, including while remaining on site and through
20 after hours work related communications and other work requirements.

21 17. Defendants also paid Plaintiff and the other Class members various forms of
22 bonuses and shift differentials, along with gift cards and other forms of remuneration above and
23 beyond their regular hourly rates. Defendants neglected to record any gift cards on wage
24 statements in violation of Labor Code §§ 212 and 213. However, despite requiring Plaintiff and
25 the Class members to work extended shifts of over eight hours, Defendants both failed to pay for
26 all overtime hours actually worked and, upon information and belief, failed to pay that overtime
27 at the correct rate. More specifically, to the extent Defendants paid both overtime and a bonus or
28 shift differential to Plaintiff and the Class members in the same pay period, Defendants

1 miscalculated and underpaid overtime hours by failing to include all forms of remuneration, i.e.
2 bonuses, shift differentials and the like, in the regular rate used to calculate and pay overtime.
3 Additionally, to the extent Defendants paid any sick pay to Plaintiff during these pay periods,
4 Defendants similarly miscalculated the rate at which it was paid by failing to account for all
5 forms of remuneration in the regular rate.

6 18. Plaintiff was therefore not paid for all her hours worked at the required minimum,
7 overtime, and double time wage rates due to Defendants' uniformly applied and unlawful policy
8 and practice of requiring her to work off the clock and without pay. Defendants systematically
9 underpaid Plaintiff and the Class members by failing to pay them at the required overtime rates
10 for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a
11 day at the required double time rate. Upon information and belief, the Class members were bound
12 by similar scheduling and timekeeping policies and endured similar violations at Defendants'
13 hands as Plaintiff.

14 19. Defendants have failed to maintain timekeeping records for Plaintiff that would
15 permit Plaintiff to discover the nature and extent of the off the clock work Defendants required
16 and the actual hours Plaintiff worked or the breaks she received. By failing to pay for all hours
17 worked, and by under-recording regular hours to the detriment of the Class members, Defendants
18 have committed knowing and intentional ongoing violations of the record keeping requirements
19 under the Labor Code, including section 1174, by either failing to maintain records or retaining
20 inaccurate ones.

21 20. The failure to pay for all hours worked and underpayment of wages to Plaintiff
22 and the Class members is and has been a direct consequence of Defendants' unlawful
23 compensation policies and practices, which upon information and belief applied uniformly to the
24 Class members working based out of Defendants' facilities throughout California. As a result of
25 the above-described unlawful requirements to work off the clock, the rounding and time shaving,
26 the failure to accurately record all hours worked and pay wages at the correct rates, and the other
27 wage violations they endured at Defendants' hands, Plaintiff and the Class members were not
28 properly paid all wages earned and all wages owed to them by Defendants, including when

1 working more than eight hours in any given day and/or more than forty hours in any given week.

2 21. Therefore, from at least four years prior to the filing of this lawsuit and continuing
3 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
4 hours worked and failing to pay minimum wages for all time worked, as required by California
5 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
6 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
7 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
8 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
9 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

10 22. Defendants also failed to provide Plaintiff and the Class members with their
11 required meal periods and at least two ten-minute rest breaks as required at a minimum for
12 Plaintiff's scheduled shift durations. The above-described off-the-clock work contributed to
13 Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Class
14 members, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s).
15 Defendants similarly failed to authorize and permit Plaintiff and the employee Class Members to
16 take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the
17 IWC Wage Order(s).

18 23. More specifically, Plaintiff worked shifts that entitled her to at least one meal
19 period, but due to prioritizing patient care, Plaintiff was compelled to delay her meal periods or
20 have them interrupted. The heavy workloads, patient demands, and management expectations also
21 contributed to Employees working through meal periods or not taking them or taking them late so
22 work could be accomplished or they were required to remain under Defendants' control during
23 meal periods. Furthermore, due to Defendants' policy of locking the facility's doors after 7:00
24 p.m., Employees were deterred from leaving the facility. If they did, it would inevitably cause
25 Employees' meal periods to be shortened and interrupted by having to ring the doorbell and wait
26 for a staff member to open it. In addition, when Plaintiff's time records reflected a late meal
27 period, she was compelled by Defendants to modify her time records so that her meal period
28 appeared earlier than actually taken so that Defendants could avoid paying a meal premium.

1 24. Therefore, meal period violations systematically occurred ongoing throughout all
2 of Plaintiff's work shifts where Defendants both failed to provide a lawful meal period or penalty
3 payment and then also unlawfully deducted 30 minutes from Plaintiff's hours worked for the day.
4 To the extent Defendants ever did pay Plaintiff a meal period premium, they failed to include all
5 forms of remuneration beyond hourly wages in the regular hourly rate used to pay the one-hour
6 premium payment. Upon information and belief, the other Class members were subjected to
7 similar unlawful policies and practices and endured similar violations as Plaintiff.

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

16 26. Upon information and belief, Defendants' systems did not automatically generate a
17 meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours
18 into a work shift or in the event the time punch records reflected a meal period of less than thirty
19 minutes. However, upon information and belief, in the event Defendants did pay any meal period
20 premiums, they did so at the employee's customary regular rate of hourly compensation without
21 including all forms of remuneration in that hourly rate calculation, for example by omitting shift-
22 differentials and the like from the rate at which meal premiums were paid.

23 27. Defendants thus followed uniformly applied policies of not providing all required
24 meal periods to their Employees. Meal periods were often not properly provided, as work
25 demands impermissibly shortened their breaks. When Plaintiff and the Class members were able
26 to take a meal period, it was generally interrupted by work duties or was taken after the fifth hour
27 of work. Additionally, as addressed above, Defendants followed a practice of requiring off the
28 clock work in a manner that would impact when Employees were to receive meal periods and rest

breaks, thus leading to further violations.

28. As a result, Defendants' failure to provide Plaintiff and the Class members with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof. Therefore, for at least four years prior to the filing of this action and through to the present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks as required under the Labor Code and Wage Orders due to Defendants' policies and practices. On the occasions when Plaintiff and the Class members were provided with a meal period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were not provided with one hour's wages in lieu thereof. Meal period violations thus occurred in one or more of the following manners:

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

29. Similar violations resulted from Defendants' failure to authorize and permit Plaintiff and the Class members to take duty-free, net ten minute rest breaks for every four hours 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 work and patient demands if and when they
3 even attempted to take one. Upon information and belief, Defendants thus also failed to authorize
4 and permit employees to leave the premises during rest breaks, evidencing Defendants' policy
5 and practice of requiring Plaintiff and the Class members to remain under their control during
6 required off-duty rest break times.

7 30. Defendants thus failed to authorize and permit duty-free ten minute rest breaks as
8 required under the Labor Code and IWC Wage Orders. In fact, Defendants made no effort to even
9 schedule or otherwise account for time for Plaintiff and the Class members to use for duty-free,
10 net ten minute rest breaks. This common and unlawful policy uniformly applied to the Employees
11 during the relevant period, meaning Defendants' rest break policy was not to schedule or
12 otherwise authorize and permit them. Plaintiff and the Class members worked eight to twelve
13 hours on an average shift, and were required to receive at least two rest breaks or three rest breaks
14 on shifts over ten hours. Given the work demands, understaffing, and pressure from Defendants'
15 management, Plaintiff and the Class members were compelled to not take rest breaks despite
16 working extended shifts. Defendants have produced no evidence of any payments for rest break
17 violations under Labor Code § 226.7. To the extent Defendants have paid any such premiums,
18 upon information and belief they failed to include all forms of remuneration, including bonuses
19 and shift differentials, in the regular rate at which Defendants paid the premium.

20 31. Defendants' uniformly applied policies and practices thus resulted in untimely and
21 shortened or on-duty rest breaks when they were authorized and permitted. Plaintiff and the Class
22 members worked shifts of at least eight hours, which required at least two rest breaks, and often
23 worked shifts over ten hours, which required at least three rest breaks. Even on the occasions
24 when Defendants authorized and permitted Plaintiff to take a first rest break, she was not
25 permitted to take a second or a third break, and those that were provided were often late and
26 generally interrupted by job duties and requirements.

27 32. During rest periods, employers must relieve employees of all duties and relinquish
28 control over how employees spend their time. Plaintiff and the Class members were and are under

1 Defendants' control when they are working through rest breaks and remaining under Defendants'
2 control. Defendants have also provided either impermissibly shortened or untimely meal and rest
3 breaks to Plaintiff and the Class members. Plaintiff and the Employees in the Class were thus not
4 authorized and permitted to take lawful rest periods, were systematically required by Defendants
5 to work through or during breaks, and were not provided with one hour's wages in lieu thereof.
6 They were required to remain on-duty during breaks or portions of their breaks, thus making
7 them either untimely or shortened and on-duty, and they were also prevented from leaving the
8 premises and otherwise remain under Defendants' control during rest breaks under Defendants'
9 uniformly applied policies and practices. Rest period violations therefore arose in one or more of
10 the following manners:

- 11 (a) Class members were required to work without being provided a minimum
12 ten minute rest period for every four hours or major fraction thereof worked
13 and were not compensated one hour of pay at their regular rate of
14 compensation for each workday that a rest period was not provided;
- 15 (b) Class members were not authorized and permitted to take timely rest periods
16 for every four hours worked, or major fraction thereof; and
- 17 (c) Class members were required to remain on-duty during rest periods or
18 otherwise had their rest periods interrupted by work demands.

19 33. From at least four years prior to the filing of this lawsuit and continuing to the
20 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
21 deducting the Employees' earned wages, including by the above described off the clock work and
22 rounding and time shaving and on-duty work while on unpaid meal breaks. By not compensating
23 Employees for all hours worked, Defendants unlawfully deducted wages earned in violation of
24 Labor Code § 221.

25 34. Defendants also violated California Labor Code § 246 by not providing all
26 required paid sick days to Plaintiff and the Class members. Labor Code § 246 provides that an
27 Employee who "works in California for the same employer for 30 or more days within a year
28 from the commencement of employment is entitled to paid sick days as specified in this section."

1 Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their
2 required and earned sick days, in violation of Labor Code § 246. Additionally and upon
3 information and belief, Defendants have failed to provide COVID-19 supplemental sick leave to
4 the Class members during the relevant time period, including by failing to provide two work
5 weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and
6 248.2 and including damages and penalties as these sections are enforced through Labor Code §
7 248.5, which requires that: “If paid sick days were unlawfully withheld, the dollar amount of paid
8 sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250),
9 whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars
10 (\$4,000), shall be included in the administrative penalty.” As also addressed above, to the extent
11 Defendants paid any sick time, they did so at a regular rate that failed to include all forms or
12 remuneration. Plaintiff accordingly seeks this relief available for Defendants’ failure to provide
13 Employees with all their required and earned sick days and all their COVID-19 supplemental sick
14 leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties
15 available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1,
16 1198, 1199, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to Labor Code §
17 2699(g)(1).

18 35. Defendants also failed to provide suitable seating to Plaintiff and the Class
19 members. When Plaintiff was not on her feet assisting patients, Plaintiff was required to be in a
20 workstation during work hours to complete notes and charting. Throughout her shifts, including
21 when notetaking and charting, Plaintiff would be required to stand in Defendants’ workstation on
22 site for long periods. Defendants should have provided Plaintiff with suitable seating at her
23 workstation, such as a chair or a stool or the like, and such seating would in no way have
24 interfered with the performance of Plaintiff’s job duties. California Labor Code §1198 makes it
25 illegal to employ an employee under conditions of labor that are prohibited by the applicable
26 Wage Order. By failing to provide Plaintiff and certain Class members with suitable seats in
27 violation of Wage Order 7-2001, § 14, Defendants violated California Labor Code § 1198.
28 Plaintiff has been injured because she was employed by Defendants and was not provided with

1 suitable seating, in violation of Lab. Code § 1198 and Wage Order 7-2001, § 14. She was harmed
2 by Defendants' failure to provide seats because she was required to stand for extended periods of
3 time despite the fact that the nature of her work did not require that she remain standing at all
4 times.

5 36. Upon information and belief, Defendants also failed to provide Employees such as
6 Plaintiff at the time of her employment and thereafter with written notice complying with all the
7 requirements of Labor Code § 2810.5, which provides that: "At the time of hiring, an employer
8 shall provide to each employee a written notice, in the language the employer normally uses to
9 communicate employment-related information to the employee, containing" specific required
10 information. Upon information and belief, Defendants failed to provide this information to the
11 Aggrieved Employees as required under Labor Code § 2810.5. Defendants were required to
12 provide Plaintiff and the aggrieved employee Class members certain specific information upon
13 hiring pursuant to California Labor Code § 2810.5. Defendants failed to provide Plaintiff with
14 any such information when she was hired and upon information and belief Defendants committed
15 similar violations in connection with similarly situated and aggrieved Class members.

16 37. As a result of these illegal policies and practices, Defendants also engaged in and
17 enforced the following additional unlawful practices and policies against Plaintiff and the Class
18 members she seeks to represent:

- 19 a. failing to pay all wages owed to Class members who either were discharged, laid
20 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202,
21 203;
- 22 b. failing to pay all wages owed to the Class members twice monthly in accordance
23 with the requirements of Labor Code § 204;
- 24 c. failing to pay Class members all wages owed, including all meal and rest period
25 premium wages, and failing to pay them at the regular rate of compensation;
- 26 d. failing to maintain accurate records of Class members' hours worked and earned
27 wages and meal periods in violation of Labor Code §§ 226 and 1174(d) and section
28 7 of the applicable IWC Wage Orders; and

1 38. Defendants have also consistently failed to provide Class members with timely,
2 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,
3 including by the above-described requirement of off the clock work, failure to pay all overtime
4 and double time wages owed and failure to pay them at the appropriate premium rates, and failure
5 to pay premium wages for unprovided or otherwise unlawful meal and rest breaks, or by
6 miscalculating any overtime or meal period or rest break premium wages and by the systematic
7 and unlawful deductions Defendants took from Employee wages. Defendants have also made it
8 difficult to account with precision for the unlawfully withheld wages and meal and rest period
9 compensation owed to Plaintiff and the Class, during the liability period, including because they
10 did not calculate the regular rate of pay correctly when paying overtime or meal period premiums
11 and because they did not implement and preserve a record-keeping method as required for non-
12 exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable
13 California Wage Orders. Upon information and belief, time clock punches were not maintained or
14 were not accurately maintained for work shifts. Defendants also failed to accurately record and
15 pay for all regular and overtime hours worked and submitted by Plaintiff and the Class members,
16 including by failing to pay all overtime hours at the correctly calculated overtime premium rate.

17 39. Defendants have thus failed to comply with Labor Code § 226(a) by inaccurately
18 reporting total hours worked and total wages earned by Plaintiff and the Class members, along
19 with the appropriate applicable rates, among others requirements. Plaintiff and Class members are
20 therefore entitled to penalties not to exceed \$4,000.00 for each employee pursuant to Labor Code
21 § 226(b). Defendants have also failed to comply with paragraph 7 of the applicable California
22 IWC Wage Orders by failing to maintain time records showing when the employee begins and
23 ends each work period, meal periods, and wages earned pursuant to Labor Code § 226.7, and total
24 daily hours worked by itemizing in wage statements all deductions from payment of wages and
25 accurately reporting total hours worked.

26 40. Defendants also required Plaintiff and the Class members to work hours off the
27 clock for which they were not compensated. They were required to endure off the clock work
28 addressed above during interrupted or otherwise on-duty meal and rest periods and were not

1 provided with sick pay and supplemental sick leave and were subjected to systematic off the clock
2 work and rounding and miscalculation. Defendants also failed to pay all overtime premium wages
3 owed for work conducted on a work shift and a workday or failed to pay it at the correct rate, as
4 addressed above. Therefore, Defendants have also followed a uniform and consistent policy of
5 failing to pay all wages owed to Plaintiff and other similarly situated Employees at the time of
6 their termination or within seventy-two hours of their resignation, as required by California wage-
7 and-hour laws, including Labor Code § 203.

8 41. Additionally, from at least four years prior to the filing of this lawsuit and
9 continuing to the present, Defendants have regularly required Plaintiff and the Class members to
10 incur necessary business expenses in the course of performing their required job duties without
11 reimbursement. These included the cell phone-related expenses Plaintiff incurred in responding to
12 work communications from supervisors and in accessing the internet as required for work-related
13 communications. Additionally, Plaintiff was required by Defendants to wear a uniform consisting
14 of nursing scrubs that were washed and ironed for every shift, or she would be reprimanded.
15 Plaintiff was required to incur the maintenance costs for her uniform without any reimbursement
16 from Defendants. Plaintiff and the Class members must be reimbursed for these necessary
17 business expenses under Labor Code § 2802, and Defendants systematically failed to do so.

18 42. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
19 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4,
20 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,
21 1194.2 1197, 1198, 1198.5, and 1199, 2802, 2810.5, and 2698 *et seq.*, and California Code of
22 Regulations, Title 8, section 11000 *et seq.*

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

27 ///

28 ///

CLASS ALLEGATIONS

44. 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, hourly employees within the State of California.” This includes Certified Nursing Assistants (CNAs), Licensed Vocational Nurses (LVNs), caregivers, resident aids, and those 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 at the applicable minimum wage.

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

c. Subclass 3. 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.

f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members who were subject to Defendants’ policy and/or practice of deducting wages earned from their pay, including by requiring off the clock work.

g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class

members who were subject to Defendants' policy and practice of not timely paying all wages earned when they were due and payable at least twice monthly.

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

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

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

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

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

46. Defendants, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby Defendants failed to correctly calculate and pay compensation for the time worked by the 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.

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

6 **A. Numerosity**

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

13 **B. Commonality**

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

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

or provide premium pay in lieu thereof;

- f. 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;
- g. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements;
- 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 Employees all necessary business expenses;
- o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- p. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

50. The claims of the named plaintiff are typical of those of the other Employees. The Employee Class members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct and uniformly applied policies in violation of statutes, as well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for

1 the off the clock work and meal and rest violations she was required to endure are typical of those
2 of the other Class members.

3 **D. Adequacy of Representation**

4 51. Plaintiff will fairly and adequately represent and protect the interest of the
5 Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are
6 experienced and competent in litigating employment class actions.

7 **E. Superiority of Class Action**

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

13 53. As to the issues raised in this case, a class action is superior to all other methods for
14 the fair and efficient adjudication of this controversy, as joinder of all Class members is
15 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
16 members. Further, as the economic or other loss suffered by vast numbers of Class members may
17 be relatively small, the expense and burden of individual actions make it difficult for the Class
18 members to individually redress the wrongs they have suffered. Moreover, in the event
19 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
20 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
21 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
22 to vindicate their rights for violations they endured which they would otherwise be foreclosed
23 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

24 54. Class action treatment will allow those persons similarly situated to litigate their
25 claims in the manner that is most efficient and economical for the parties and the judicial system.
26 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
27 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would
28 set forth the subject and nature of the instant action. The Defendants' own business records can be

utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notice is required additional media and/or mailings can be used.

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

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

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

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

58. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of failing to pay Employees for all hours worked. 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 patients and by the unlawful deduction of hours. Defendants' uniformly applied policies required

1 systematic off the clock work and underpayment of all wages owed to Employees over a period
2 of time, while benefiting Defendants. During the relevant time period, Defendants thus regularly
3 failed to pay minimum wages to Plaintiff and the Class members, including by requiring
4 systematic off the clock work. To the extent any local wage ordinances were also applicable to
5 paying the employees an hourly rate above the minimum wage rate, Defendants failed to comply
6 with the local wage ordinances. Defendants' uniform pattern of unlawful wage and hour practices
7 manifested, without limitation, applicable to the Class as a whole, as a result of implementing a
8 uniform policy and practice that denied accurate compensation to Plaintiff and the other members
9 of the Class as to minimum wage pay.

10 59. In California, employees must be paid at least the applicable state minimum wage
11 for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and
12 paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Also, pursuant to
13 California Labor Code § 204, other applicable laws and regulations, and public policy, an
14 employer must timely pay its employees for all hours worked. Defendants failed to do so.

15 60. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
16 states: "The minimum wage for employees fixed by the commission is the minimum wage to be
17 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The
18 applicable minimum wage rate fixed by the commission for work during the relevant period is
19 found in the Wage Orders.

20 61. The minimum wage provisions of California Labor Code are enforceable by private
21 civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to
22 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
23 overtime compensation applicable to the employee is entitled to recover in a civil action the
24 unpaid balance of the full amount of this minimum wage or overtime compensation, including
25 interest thereon, reasonable attorney's fees and costs of suit."

26 62. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
27 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
28 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage

1 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
2 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
3 the absence of a contractually agreed upon one.

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

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

17 65. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
18 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
19 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
20 pay each employee minimum wages.

21 66. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
22 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
23 interest thereon.

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

27 68. Plaintiff and the Class members are entitled to recover the unpaid minimum wages
28 (including double minimum wages) and local wage ordinance wages and liquidated damages in an

1 amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's
2 fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other
3 members of the Class further request recovery of all unpaid wages, according to proof, interest,
4 statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as
5 provided by the California Labor Code and/or other applicable statutes. To the extent minimum
6 wage compensation is determined to be owed to the Class members who have terminated their
7 employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore
8 these individuals are also be entitled to waiting time penalties under California Labor Code § 203,
9 which penalties are sought herein on behalf of these Class members. Defendants' failure to timely
10 pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code §
11 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as
12 alleged herein was willful, intentional, and not in good faith. Further, Plaintiff and other Class
13 members are entitled to seek and recover statutory costs.

14 **SECOND CAUSE OF ACTION**

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

16 **(Against All Defendants)**

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

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

25 71. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
26 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
27 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular
28 hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40)

1 hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any
2 one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12)
3 hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of
4 work in a workweek.

5 72. Defendants had a consistent policy of not paying Employees wages for all hours
6 worked, including by requiring off the clock work as addressed above, by unlawful deductions, by
7 under-reporting actual hours worked, and by requiring Employees to do so as well. Defendants
8 have also failed to include all forms of remuneration in the regular rate of pay used to calculate
9 and pay overtime, and failed to begin paying overtime when it was incurred due to the off the
10 clock work, as detailed above.

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

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

1 Class members to work through meal periods when they were required to be clocked out or to
2 otherwise work off the clock to complete their daily job duties.

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

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

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

27 78. Employees have been damaged by these violations of California Labor Code §§
28 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under

1 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
2 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
3 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
4 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
5 any order or ruling of the commission.”

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

13 **THIRD CAUSE OF ACTION**

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

15 **(Against All Defendants)**

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

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

24 82. Defendants failed to provide Employees with meal periods as required under the
25 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
26 to work or to otherwise remain under Defendants’ control during meal periods, or Defendants
27 provided them after Employees worked beyond the fifth hour of their shifts or Employees
28 otherwise had them shortened and interrupted by work demands and requirements to perform off

1 the clock work and remain under Defendants' control. Furthermore, upon information and belief,
2 on the occasions when Employees worked more than ten hours in a given shift, they did so
3 without receiving a second uninterrupted thirty-minute meal period as required by law.

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

8 84. Moreover, Defendants failed to compensate Employees for each meal period not
9 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
10 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
11 employee a meal period in accordance with this section, the employer shall pay the employee one
12 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
13 period is not provided. As detailed above, on the occasions when Defendants did pay any meal
14 period premiums, they upon information and belief underpaid them by miscalculating the regular
15 rate of compensation by not including all forms of remuneration in it. Defendants thus failed to
16 compensate the Employees in the Class 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 85. 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.

25 **FOURTH CAUSE OF ACTION**

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

27 **(Against All Defendants)**

28 86. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

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

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

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

19 90. Defendants, and each of them, have therefore intentionally and improperly denied
20 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and
21 paragraph 12 of the applicable IWC Wage Orders.

22 91. Defendants failed to authorize and permit Plaintiff and the Class members to take
23 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
24 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
25 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
26 12 and 20 of the applicable IWC Wage Orders.

27 92. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
28 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one hour

1 of wages at their effective hourly rates of pay for each day worked without the required rest
2 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
3 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

4 **FIFTH CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE § 226(a)**

6 **(Against All Defendants)**

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

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

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

23 96. Throughout the liability period, Defendants intentionally failed to furnish to
24 Plaintiff and the Class members, upon each payment of wages, itemized statements accurately
25 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
26 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net
27 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
28 the employee and only the last four digits of his or her social security number or an employee

1 identification number other than a social security number, (8) the name and address of the legal
2 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
3 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
4 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory
5 requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class
6 members with such timely and accurate wage and hour statements.

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

23 98. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
24 are required "to pay each employee, on the established payday for the period involved, not less
25 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
26 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
27 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members
28 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph

1 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
2 IWC Wage Orders.

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

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

15 **SIXTH CAUSE OF ACTION**
16 **VIOLATION OF LABOR CODE § 221**
17 **(Against All Defendants)**

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

20 102. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
21 receive from an employee any part of wages theretofore paid by said employer to said employee."
22 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
23 public policy, an employer must timely pay for all hours worked. Defendants failed to do so.

24 103. Defendants unlawfully received and/or collected wages from the Employees in the
25 Class by requiring off the clock work, by miscalculating overtime, and not paying one hour of pay
26 at the regular rate of compensation for every meal and rest period violation endured by Plaintiff
27 and the other Class members, as alleged above. By not compensating Employees for all hours
28 worked Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

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

3 **SEVENTH CAUSE OF ACTION**
4 **VIOLATION OF LABOR CODE § 204**
5 **(Against All Defendants)**

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

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

22 107. All wages due and owing to Plaintiff and the Class members, including as required
23 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
24 required by Labor Code § 1194 and other sections became due and payable to each employee in
25 each pay period that he or she was not provided with a meal period or rest period or paid straight
26 or overtime wages to which he or she was entitled.

27 108. Defendants violated Labor Code § 204 by systematically refusing to timely pay
28 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the

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

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

13 **EIGHTH CAUSE OF ACTION**
14 **VIOLATION OF LABOR CODE § 203**
15 **(Against All Defendants)**

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

18 111. Plaintiff and numerous Class members are no longer employed by Defendants; they
19 either quit Defendants’ employ or were fired therefrom.

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

22 113. The wages withheld from these Employees by Defendants remained due and owing
23 for more than thirty days from the date of separation from employment.

24 114. Defendants thus failed to pay Plaintiff and the Class members without abatement,
25 all wages as defined by applicable California law. Among other things, these Employees were not
26 paid all regular and overtime wages, including by Defendants failing to pay for all hours worked
27 or requiring off the clock work or by unlawfully under-recording time entries to the detriment of
28 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and

1 rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the
2 required time was willful within the meaning of Labor Code § 203.

3 115. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
4 are required "to pay each employee, on the established payday for the period involved, not less
5 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
6 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
7 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members
8 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
9 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
10 IWC Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and
11 Defendants are subject to a fine of not less than \$100 for causing Employees "to work for longer
12 hours than those fixed, or under conditions of labor prohibited by an order of the commission" or
13 if the employer pays "a wage less than the minimum fixed by an order of the commission" or
14 "violates...any provision of this chapter or any order or ruling of the commission."

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

19 **NINTH CAUSE OF ACTION**

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

21 **(Against All Defendants)**

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

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

28 119. During the course of Plaintiff's and Employees' employment, Defendants

1 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as
2 required by California Labor Code § 1174 by failing to pay them proper wages, overtime, and
3 premium pay as discussed above and failing to document and pay for actual hours worked.

4 120. Defendants are also required by the California Labor Code § 1198 and the
5 applicable Wage Order to maintain a tracking system that accurately records the times during
6 which Employees work.

7 121. Defendants have maintained a common unlawful policy and practice of failing to
8 accurately record all hours worked and all meal period start and end times and by adjusting or
9 otherwise rounding and shaving them down.

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

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

14 **TENTH CAUSE OF ACTION**

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

16 **(Against All Defendants)**

17 124. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
18 full herein.

19 125. Plaintiff is informed and believes and based thereon alleges that throughout the
20 period applicable, Defendants required Plaintiff and the Class members to pay for necessary work
21 related expenses they incurred. These included the cell phone-related expenses Plaintiff incurred
22 in responding to work communications from supervisors and in accessing the internet as required
23 for work-related communications. Additionally, Plaintiff was required by Defendants to wear a
24 uniform consisting of nursing scrubs that were washed and ironed for every shift, or she would be
25 reprimanded. Plaintiff was required to incur the maintenance costs for her uniform without any
26 reimbursement from Defendants. Plaintiff and the Class members must be reimbursed for these
27 necessary business expenses under Labor Code § 2802 and Defendants failed to do so.

28 126. Defendants thus followed a uniform policy and practice of failing to reimburse

1 Employees for these necessary work related expenses or losses incurred in direct discharge of their
2 job duties during employment with Defendants and at the direction of the Defendants pursuant to
3 Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

4 127. Defendants' knowing and willful failure to reimburse lawful necessary work related
5 expenses and losses to Plaintiff and the Class members resulted in damages because, among other
6 things, Defendants did not inform employees of their right to be reimbursed for those work related
7 expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard
8 to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and
9 necessary expenses was an expected and essential function of their employment with Defendants
10 and that failure to incur those expenses would have adverse consequences on their employment.

11 128. Therefore, Plaintiff and the Class members are entitled to reimbursement for any
12 and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9
13 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while
14 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed
15 from the date Plaintiff and the Class members incurred those expenses. Further, Plaintiff and the
16 Class members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

17 **ELEVENTH CAUSE OF ACTION**

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

19 **(Against All Defendants)**

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

26 130. Plaintiff is a "person" within the meaning of Business & Professions Code
27 § 17204, has suffered injury, and therefore has standing to bring this cause of action for
28 injunctive relief, restitution, and other appropriate equitable relief.

1 131. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
2 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
3 fraudulent in that Defendants' policy and practice failed to provide the required amount of
4 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
5 Class members for all hours worked, due to systematic business practices as alleged herein that
6 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
7 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
8 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
9 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

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

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

TWELFTH CAUSE OF ACTION

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

(Against All Defendants)

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

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

141. In failing to pay Aggrieved Employees minimum wages and overtime, not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above,

1 Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required
2 under Labor Code § 204. Defendants also failed to maintain records showing accurate hours
3 worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and
4 paragraph 7 of the applicable IWC Wage Orders.

5 142. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
6 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5,
7 including the penalty provisions, without limitation, based, inter alia, on the following California
8 Labor Code sections: 201, 202, 203, 204, 226, 226.7, 246, 248.1, 248.2, 248.5, 510, 512, 558,
9 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and
10 2698 *et seq.*

11 143. More specifically, after complying with the notice procedures of Labor Code §
12 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
13 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
14 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
15 including as follows:

16 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
17 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
18 premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198,
19 and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all
20 civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2,
21 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to
22 Labor Code § 2699(g)(1);

23 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
24 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
25 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
26 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
27 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
28 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 citation, ...";

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

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

(f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For

1 Defendants' failure to provide Employees with all their required and earned sick days and all their
2 COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil
3 and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5,
4 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to
5 Labor Code § 2699(g)(1); and

6 (g) Failure to Provide Suitable Seating: For the above addressed violations of
7 paragraph 14 of the applicable IWC Wage Orders constituting violations of Labor Code § 1198
8 and Labor Code § 2699.5, and the civil and statutory penalties available and applicable under
9 Labor Code § 2699(f)(2) and paragraphs 14 and 20 of the applicable IWC Wage Orders, and also
10 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

11 (h) All Other Alleged Violations of the Labor Code and IWC Wage Orders: For Labor
12 Code § 2810.5, and any above-addressed violation of the applicable provisions of the Labor Code
13 and IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5,
14 and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of
15 the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code §
16 2699(g)(1).

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

19 (a) Any employer or other person acting on behalf of an employer who
20 violates, or causes to be violated, a section of this chapter or any provision
21 regulating hours and days of work in any order of the Industrial Welfare
22 Commission shall be subject to a civil penalty as follows: (1) For any initial
23 violation, fifty dollars (\$50) for each underpaid employee for each pay period for
24 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...

25 (b) If upon inspection or investigation the Labor Commissioner determines that
26 a person had paid or caused to be paid a wage for overtime work in violation of any
27 provision of this chapter, or any provision regulating hours and days of work in any
28 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.

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

3 145. Plaintiff has exhausted her administrative remedies by submitting a certified letter
4 to the LWDA and Defendants on November 8, 2023 (LWDA-CM-992989-23) addressing in detail
5 the specific provisions of the Labor Code Defendants have violated and addressing the facts and
6 legal theories to support the alleged violations and requested penalties. The LWDA has not
7 provided notice of its intent to investigate the alleged violations within 65 calendar days of the
8 postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the
9 violations addressed herein and in the PAGA Notice letter and the original Complaint.

10 **RELIEF REQUESTED**

11 WHEREFORE, Plaintiff prays for the following relief:

- 12 1. For an order certifying this action as a class action;
- 13 2. For compensatory damages in the amount of the unpaid minimum wages for work
14 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
15 the filing of this action, as may be proven;
- 16 3. For liquidated damages in the amount equal to the unpaid minimum wage and
17 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 18 4. For compensatory damages in the amount of all unpaid wages, including overtime
19 and double-time pay, as may be proven;
- 20 5. For compensatory damages in the amount of the hourly wage made by Employees
21 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
22 years prior to the filing of this action, as may be proven;
- 23 6. For compensatory damages in the amount of the hourly wage made by Employees
24 for each day requisite rest breaks were not provided or were deficiently provided where no
25 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
26 be proven;
- 27 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 28 8. For restitution and/or damages and penalties for Defendants' failure to pay all

1 wages due twice monthly under Labor Code § 204, as may be proven;

2 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
3 for all class members in violation of Labor Code § 221, as may be proven;

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

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

7 12. For damages and restitution for failure to reimburse all reasonable and necessary
8 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

9 13. For restitution for unfair competition pursuant to Business & Professions Code
10 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

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

14 15. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

15 16. For penalties under Labor Code § 558, as may be proven;

16 17. For other wages and penalties under the Labor Code as may be proven;

17 18. For all general, special, and incidental damages as may be proven;

18 19. For an award of pre-judgment and post-judgment interest;

19 20. For an award providing for the payment of the costs of this suit;

20 21. For an award of attorneys' fees; and

21 22. For such other and further relief as this Court may deem proper and just.

22 DATED: January 12, 2024

D.LAW, INC.

23 By

Emil Davtyan

David Yeremian

Alvin B. Lindsay

24 Tania Fonseca

25 Attorneys for Plaintiff

26 Chanel Vick 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 12, 2024

D.LAW, INC.

By



Emil Davtyan
David Yeremian
Alvin B. Lindsay
Tania Fonseca
Attorneys for Plaintiff
Chanel Vick and all others similarly situated

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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

CSC – Lawyers Incorporating Service, Agent for Service of Process
Montclair Manor Care Center, LLC.
 2710 Gateway Oaks Dr.,
 Sacramento, CA 95833

[] (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]

Executed on January 12, 2024, at Glendale, California.

Sasha Lee

Sasha Zambrano