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Superior Court of California,
County of Monterey
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ELMER CHAVARRIA MEJIA, and RAFAEL MENJIVAR
CASTELLANOS on behalf of themselves and others similarly situated

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

OSMIN CHAVARRIA MEJIA, ELMER
CHAVARRIA MEJIA, and RAFAEL
MENJIVAR CASTELLANOS, on behalf of
themselves and others similarly situated,

Plaintiffs,

vs.

SAR CALIFORNIA HOLDCO INC. dba
SARKU JAPAN, a Canadian corporation; and
DOES 1 through 50, inclusive

Defendants.

Case No. 24CV000168

CLASS ACTION

Assigned for All Purposes To:

Hon. Carrie M. Panetta

Dept.: 14

**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 Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Failure to Pay Vacation Wages
6. Failure to Comply with Labor Code § 245 *et seq.* and 246
7. Violation of Labor Code § 226(a);
8. Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5;
9. Failure to Produce Requested Employment Records Under Labor; Code §§ 226 and 1198.5;
10. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
11. Penalties Pursuant to Labor Code § 203; and
12. Violation of Business & Professions Code § 17200 *et seq.*; and
13. Penalties Pursuant to Labor Code § 2699, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiffs OSMIN CHAVARRIA MEJIA, ELMER CHAVARRIA MEJIA, and RAFAEL
2 MENJIVAR CASTELLANOS, (hereinafter “Plaintiffs”) on behalf of themselves and all others
3 similarly situated (collectively, “Employees”; individually, “Employee”) complains of Defendants,
4 and each of them, as follows:

5 **INTRODUCTION**

6 1. Plaintiffs bring this action on behalf of themselves and all similarly situated current
7 and former employees within the State of California who, at any time four (4) years prior to the
8 filing of this lawsuit, are or were employed as non-exempt hourly employees by Defendants SAR
9 CALIFORNIA HOLDCO INC. dba SARKU JAPAN, a Canadian corporation; and DOES 1 through
10 50 (all defendants being collectively referred to herein as “Defendants”). Plaintiffs allege that
11 Defendants, and each of them, violated various provisions of the California Labor Code, relevant
12 orders of the Industrial Welfare Commission (IWC), and California Business & Professions Code,
13 and seeks redress.

14 2. Plaintiffs are residents of California and during the time period relevant to this
15 Complaint were employed by Defendants as non-exempt hourly employees within the State of
16 California at Defendants’ facilities and offices in California. Plaintiffs and the other Class members
17 worked for Defendants in Monterey County and/or throughout California, and consistently worked
18 at Defendants’ behest without being paid all wages due. More specifically, Plaintiffs and the other
19 similarly situated Class members were employed by Defendants and worked at Defendants’ offices
20 and other facilities where the conduct giving rise to the allegations in this Class Action Complaint
21 occurred. Upon information and belief, Plaintiffs were employed by Defendants and (1) shared
22 similar job duties and responsibilities, (2) was subjected to the same policies and practices, and (3)
23 endured similar violations at the hands of Defendants as the other Employee Class members who
24 served in similar and related positions.

25 3. Defendants required Plaintiffs and the Employees in the Class to perform work while
26 remaining under Defendants’ control before and after being on the clock for their daily work shift.
27 Defendants failed to provide Plaintiffs and the Class with lawful meal and rest periods, as employees
28 were not provided with the opportunity to take timely, uninterrupted, and duty-free meal and rest

1 periods as required by the Labor Code.

2 **THE PARTIES**

3 **A. The Plaintiffs**

4 4. Plaintiffs OSMIN CHAVARRIA MEJIA, ELMER CHAVARRIA MEJIA, and
5 RAFAEL MENJIVAR CASTELLANOS have resided in California and during the time period
6 relevant to this Complaint were employed by Defendants as a non-exempt hourly employee within
7 the State of California at Defendants' facilities and offices in California.

8 **B. The Defendants**

9 5. Defendant SAR CALIFORNIA HOLDCO INC. dba SARKU JAPAN ("SAR") is a
10 Canadian corporation with its principle executive offices in Ontario, Canada, and has been listed as
11 the employer on the wage statements issued to Plaintiffs during the relevant time period. SAR
12 employs Plaintiffs and the Class members in California, including at Defendants' offices and
13 facilities in Salinas, California, and throughout California and conducts business throughout
14 California.

15 6. The true names and capacities, whether individual, corporate, associate, or whatever
16 else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to
17 Plaintiffs, who therefore sue these Defendants by such fictitious names under Code of Civil
18 Procedure § 474. Plaintiffs are informed and believe and thereon allege that Defendants designated
19 herein as Does 1 through 50, inclusive, and each of them, are legally responsible in some manner
20 for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint
21 to reflect the true names and capacities of the Defendants designated herein as Does 1 through 50
22 when their identities become known.

23 7. Plaintiffs are informed and believe and thereon allege that each Defendants acted in
24 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out
25 a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each
26 Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all
27 respects as the employers or joint employers of Employees. Defendants, and each of them, exercised
28 control over the wages, hours or working conditions of Employees, created and implemented the

1 policies and practices that governed the employment of Plaintiffs and the Class members and
2 dictated their job duties and responsibilities, or otherwise suffered or permitted Employees to work,
3 or engaged, thereby creating a common law employment relationship, with Employees. Therefore,
4 Defendants, and each of them, employed or jointly employed Employees.

5 **JURISDICTION AND VENUE**

6 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
7 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as
8 a Class Action on behalf of similarly situated Employees of Defendants pursuant to California Code
9 of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to
10 California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and
11 liabilities giving rise to this lawsuit occurred at least in part in Monterey County and Defendants
12 maintain and operate company offices and facilities in Monterey County, and employ Plaintiffs and
13 other Class members in Monterey County and throughout California.

14 **FACTUAL BACKGROUND**

15 9. The Employees who comprise the Class and Collective, including Plaintiffs, are
16 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
17 Employees who work in nonexempt positions at the direction of Defendants in the State of
18 California. Plaintiffs and the Class members were either not paid by Defendants for all hours worked
19 or were not paid at the appropriate minimum, regular and overtime rates. Furthermore, the
20 uncompensated time included the time Employees worked off-the-clock during meal periods as a
21 result of Defendants' high demand. Moreover, Employees were required wait in line in order to clock
22 in before every shift. Additionally, Defendants required the Employee Class members to clock in
23 and out by using Defendant's fingerprint time clock. The timekeeping system thus permitted
24 Defendants to record clock in and clock out times to the real-time minute. However, rather than
25 paying Plaintiffs and the Class members for all hours and minutes they actually worked, on days
26 when the timeclock would not function properly and the manager was not there to log Class
27 Members' clock in and out times, Defendant would round those times and generally did so to the
28 and generally did so to the detriment of the Employees, and these unlawfully rounded time entries

1 were inputted into Defendants' payroll system from which wage statements and payroll checks were
2 created. Defendants did so with the ostensible intent of paying Class members only for the hours
3 they were scheduled to work, rather than the hours they were actually under Defendants' control.
4 Plaintiffs contend this policy is not neutral and results, over time, to the detriment of the Class
5 members by systematically undercompensating them.

6 10. Defendants had also either failed to maintain timekeeping records for Plaintiffs that
7 would permit them to discover the nature and extent of Defendants' unlawful rounding or has
8 refused to produce them to Plaintiffs in response to their timely request to be provided with them.

9 11. Plaintiffs also contend that Defendants failed to pay Plaintiffs and the Class members
10 all wages due and owing, failed to provide meal and rest breaks, and failed to furnish accurate wage
11 statements, all in violation of various provisions of the California Labor Code and applicable Wage
12 Orders. Additionally, Defendants paid Plaintiffs and Employees shift differentials, nondiscretionary
13 commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and
14 belief, Defendants failed to incorporate all remunerations, including shift differentials,
15 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation
16 of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during
17 times when Plaintiffs and Employees worked overtime and received shift differentials,
18 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants
19 failed to pay all overtime wages by paying a lower overtime rate than required.

20 12. Moreover, Plaintiffs contend that Defendants failed to pay Plaintiffs and the Class
21 members all wages due and owing, by failing to provide meal and rest breaks, and failed to furnish
22 accurate wage statements, all in violation of various provisions of the California Labor Code and
23 applicable Wage Order provisions.

24 13. During the course of Plaintiffs and the Class members' employment with
25 Defendants, they were not paid all wages they were owed, including for all work performed and
26 for all overtime hours worked, and they were forced to work during their meal and rest breaks to
27 keep labor budgets low.

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1 14. As a matter of uniform Company policy, Plaintiffs and the Class members were
2 required to work during their meal and rest breaks which were not compensated by Defendants in
3 violation of the California Labor Code. Plaintiffs and the Class members were also not paid regular
4 wages and overtime for the time they were required to comply with other requirements imposed
5 upon them, which they had to complete while working through their meal and rest breaks and
6 without compensation. As a result Plaintiffs and the Class members worked shifts over eight (8)
7 hours in a day and over forty (40) hours in a work week, but they were not paid at the appropriate
8 overtime rate for all such hours, including by being required to perform work duties and tasks
9 without pay and while off-the-clock and due to Defendants' unlawful rounding which caused
10 overtime to begin accruing before it did in Defendants' timekeeping and payroll systems. As a
11 result, Plaintiffs and the Class members worked substantial overtime hours during their
12 employment with Defendants for which they were not compensated, in violation of the California
13 Labor Code, applicable IWC Wage Orders.

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

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

28 17. Additionally from at least four (4) years prior to the filing of this lawsuit and

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

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

13 19. From at least four (4) years prior to the filing of this lawsuit and continuing to the
14 present, Defendants paid Plaintiffs and Employees shift differentials, nondiscretionary
15 commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and
16 belief, Defendants failed to incorporate all remunerations, including shift differentials,
17 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation
18 of the regular rate of pay for purposes of calculating sick pay. Therefore, during times when
19 Plaintiffs and Employees worked overtime and received shift differentials, nondiscretionary
20 commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all sick pay
21 by paying a lower overtime rate than required.

22 20. From at least four (4) years prior to the filing of this lawsuit and continuing to the
23 present, Defendants paid Plaintiffs and Employees shift differentials, nondiscretionary
24 commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and
25 belief, Defendants failed to incorporate all remunerations, including shift differentials,
26 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation
27 of the regular rate of pay for purposes of calculating vacation pay. Therefore, during times when
28 Plaintiffs and Employees worked overtime and received shift differentials, nondiscretionary

1 commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all vacation
2 pay by paying a lower overtime rate than required. Defendants also failed to pay Plaintiffs and
3 Employees all earned and accrued vacation pay.

4 21. From at least four (4) years prior to the filing of this lawsuit and continuing to the
5 present, Defendants have consistently failed to provide Employees with paid duty-free rest breaks
6 of not less than ten (10) minutes for every work period of four (4) or more consecutive hours; nor
7 did Defendant pay Employees premium pay for each day on which requisite rest breaks were not
8 provided or were deficiently provided at one hour of wages at each Employee's effective regular
9 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

10 22. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
11 continuing to the present, Defendants have consistently failed to provide Employees with timely,
12 accurate, and itemized wage statements as required by California wage-and-hour laws.
13 Specifically, the wage statements given to Employees, by Defendants, failed to include the above
14 requirements enumerated above. Employees' wage statements did not include: the total hours
15 worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable
16 hourly rates in effect during the pay period and the corresponding number of hours worked at each
17 such rate in violation of Labor Code § 226 (a)(9). The wage statements provided to Employees
18 were confusing and required Employees to engage in discovery and refer to outside sources to
19 verify whether their pay was correct and potentially resulting in a miscalculation by the
20 Employees. Additionally, Defendants failed in their affirmative obligation to keep accurate
21 records of the correct overtime wages based on proper regular rate calculations that included shift
22 differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary
23 bonuses earned, and the total amount of compensation of their Employees. Moreover, the wage
24 statements given to Employees by Defendants failed to accurately account for wages, overtime,
25 and premium pay for deficient meal periods and rest breaks all of which Defendants knew or
26 reasonably should have known were owed to Employees, as alleged hereinabove. The wage
27 statements provided to Employees were confusing and required Employees to engage in discovery
28 and refer to outside sources to verify whether their pay was correct and potentially resulting in a

1 miscalculation by the Employees.

2 23. From at least four (4) years prior to the filing of this lawsuit and continuing to the
3 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
4 performance of their job duties for Defendants including, but not limited to the costs of cell phone
5 usage which was necessary to perform their duties under Defendants' employ which was used
6 throughout the course of Employees' duties under Defendants' employ in violation of Labor code
7 §2802.

8 24. From at least four (4) years prior to filing this lawsuit and continuing to the present,
9 Defendants have had a consistent policy of failing to pay all wages fur and owed to Employees at
10 the time of their termination of within seventy-two (72) hours of their resignation, as required by
11 California wage-and-hour laws.

12 25. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
13 Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 223, 226, 226.3, 226.4, 226.7, 227.3, 245, *et seq*,
14 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12 1185, 1194, 1194.2, 1197, 1198, 1198.5 1199,
15 2698, 2699, *et seq.*, 2802, and applicable provisions of the IWC Wage Orders.

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

19 **CLASS ALLEGATIONS**

20 27. Plaintiffs bring this class action on behalf of themselves and all others similarly
21 situated pursuant to Code of Civil Procedure § 382. Plaintiffs seek to represent a class defined as
22 follows: "All individuals employed by Defendants, at any time within four (4) years of the filing of
23 this lawsuit, as non-exempt, hourly employees within the State of California.

24 28. Further, plaintiffs seek to represent the following Subclasses composed of and
25 defined as follows:

26 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
27 compensated for all hours worked for Defendants at the applicable minimum wage.

28 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not

1 compensated for all hours worked for Defendants at the required rates of pay, including for all hours
2 worked in excess of eight in a day and/or forty in a week.

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

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

10 e. Subclass 5. Vacation Wages Subclass. All Class members who were not
11 compensated at the Employee's regular rate of pay for their vacation wages, paid all their vacation
12 wages, and subject to Defendants' unlawful policy of capping the amount of vacation time that an
13 employee may have.

14 f. Subclass 6. Sick Pay Subclass. All Class members who were not compensated at the
15 Employee's regular rate of pay for their sick pay wage.

16 g. Subclass 7. Wage Statement Subclass. All Class members who, within the applicable
17 limitations period, were not provided with accurate itemized wage statements.

18 h. Subclass 8. Payroll Records Subclass. All Class members who were subject to
19 Defendants' policy and/or practice of failing to keep accurate time and wage records as required by
20 California wage-and-hour laws.

21 i. Subclass 9. Failure To Produce Requested Employment Records Subclass. All
22 Class members who, within the applicable limitations period, were denied the right to inspect and
23 receive all of their payroll records, timecards, and personnel records.

24 j. Subclass 10. Expense Reimbursement Subclass. All Class members who incurred
25 necessary and reasonable expenses in connection with performing their job duties for Defendants
26 and who were subject to a policy and/or practice of failing to timely pay wages upon termination.

27 k. Subclass 11. Termination Pay Subclass. All Class members who, within the
28 applicable limitations period, either voluntarily or involuntarily separated from their employment

1 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
2 termination.

3 1. Subclass 12. UCL Subclass. All Class members who are owed restitution as a
4 result of Defendants' business acts and practices, to the extent such acts and practices are found to
5 be unlawful, deceptive, and/or unfair.

6 29. Plaintiffs reserve the right under California Rule of Court 3.765 to amend or modify
7 the class description with greater particularity or further division into subclasses or limitation to
8 particular issues.

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

12 **A. Numerosity**

13 31. The potential members of the class as defined are so numerous that joinder of all the
14 member of the class is impracticable. While the precise number of class member has not been
15 determined at this time, Plaintiffs are informed and believe that, during the time period relevant to
16 this lawsuit, Defendants employed more than 100 individuals within the State of California.

17 32. Accounting for employee turnover during the relevant time period increases this
18 number substantially. Plaintiffs allege that Defendants' employment records will provide
19 information as to the number and location of all class members.

20 **B. Commonality**

21 33. There are questions of law and fact common to the class that predominate over any
22 questions affecting only individual class members. These common questions of law and fact include:

- 23 a. Whether Defendants failed to pay Employees minimum wages;
- 24 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 25 c. Whether Defendants failed to pay Employees overtime as required under Labor Code
26 § 510;
- 27 d. Whether Defendants failed to pay Employees vacation wages as required under
28 Labor Code § 227.3;

- 1 e. Whether Defendants failed to pay Employees sick pay as required under Labor Code
2 § 245;
- 3 f. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC
4 Wage Orders, by failing to provide Employees with requisite meal periods or
5 premium pay in lieu thereof;
- 6 g. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
7 Orders, by failing to provide Employees with requisite rest breaks or premium pay
8 in lieu thereof;
- 9 h. Whether Defendants violated Labor Code § 226(a);
- 10 i. Whether Defendants violated Labor Code § 204 by failing to pay Employees all
11 wages earned at least twice monthly;
- 12 j. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 13 k. Whether Defendants violated Labor Code §§ 226 and 1198.5
- 14 l. Whether Defendants failed to keep accurate time and wage records;
- 15 m. Whether Defendants failed to reimburse Employees for necessary business
16 expenses;
- 17 n. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
18 wages and compensation due and owing at the time of termination of employment;
- 19 o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 20 p. Whether Employees are entitled to equitable relief pursuant to Business and
21 Professions Code § 17200 *et seq.*
- 22 q. Whether Employees are liable for penalties under Labor Code § 2699, *et seq.*

23 **C. Typicality**

24 34. The claims of the named plaintiffs are typical of those of the other Employees.
25 Employees all sustained injuries and damages arising out of and caused by Defendant's common
26 course of conducts in violation of statutes, as well as regulations that have the force and effect of
27 law, as alleged herein.

28 ///

1 **D. Adequacy of Representation**

2 35. Plaintiffs will fairly and adequately represent and protect the interest of Employees.
3 Counsel who represents Employees are experienced and competent in litigating employment class
4 actions.

5 **E. Superiority of Class Action**

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

11 37. Class action treatment will allow those persons similarly situated to litigate their
12 claims in the manner that is most efficient and economical for the parties and the judicial system.
13 Plaintiffs are unaware of any difficulties in managing this case that should preclude class action.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

16 **(Against All Defendants)**

17 38. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
18 full herein.

19 39. Defendants failed to pay Employees minimum wages for all hours worked.
20 Defendants had a consistent policy of misstating Employees time records and failing to pay
21 Employees for all hours worked. Defendants did not pay Plaintiffs and Employees at the applicable
22 minimum wage for all hours worked. Specifically, Plaintiffs and Employees were required to clock
23 out for their meal periods and continue working. Further Plaintiffs and Employees were required
24 to wait in line to clock in for their shifts. In addition, Defendants failed to compensate for all hours
25 worked and at the applicable hourly rates. Defendants' uniform pattern of unlawful wage and hour
26 practices manifested, without limitation, applicable to the Class as a whole, as a result of
27 implementing a uniform policy and practice that denied accurate compensation to Plaintiffs and
28 the other members of the Class as to minimum wage pay. Additionally, Defendants rounded

1 timekeeping entries and revisions made to timekeeping records to reflect less time worked than
2 was actually worked and Defendants have also intentionally and improperly rounded, changed,
3 adjusted and/or modified Employee hours, while benefiting Defendants. The caused Employees
4 to work without compensation in excess of their eight-hour shift in a given work day. Defendants'
5 uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to
6 Employees, as a result of implementing a uniform policy and practice that denied accurate
7 compensation to Plaintiffs and the other members of the Employees as to minimum wage pay.

8 40. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:

9 The minimum wage for employees fixed by the commission is the
10 minimum wage to be paid to employees, and the payment of a less
11 wage than the minimum so fixed is unlawful.

12 41. The applicable minimum wages fixed by the commission for work during the
13 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are therefore
14 entitled to double the minimum wage during the relevant period.

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

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

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

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

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

45. Wherefore, Employees are entitled to recover the unpaid minimum wages (including

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

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

46. Plaintiffs re-allege and incorporates all preceding paragraphs, as though set forth in full herein.

47. By their conduct, as set forth herein, Defendants violated California Labor Code § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, as addressed above. Specifically, Plaintiffs and Employees were required to clock out for their meal periods and continue working. Further Plaintiffs and Employees were required to wait in line to clock in for their shifts. Therefore, Employees were often not properly compensated, nor were they paid overtime rates for all hours worked in excess of eight hours in a given day, and/or forty hours in a given week.

48. Furthermore, on information and belief, Defendants did not pay Plaintiffs and Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Plaintiffs and Employees shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate.

49. Therefore, during times when Plaintiffs and Employees worked overtime and

1 received shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary
2 bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

3 50. Defendants consistently improperly rounded down, changed, adjusted Employees
4 time records, paid Employees less than their time records showed as demonstrated by
5 Employees' timesheets which reveal little variance between the hours worked by employees on a
6 daily basis.

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

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

13 53. The forgoing uncompensated work caused Plaintiffs and Employees to work in
14 excess of eight (8), ten (10), and twelve (12) hours a day, and/or forty (40) hours a week, entitling
15 them to overtime and double-time wages which were systemically denied.

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

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

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

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1 **THIRD CAUSE OF ACTION**

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

3 **(Against All Defendants)**

4 57. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
5 full herein.

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

11 59. Defendants failed to provide Employees with meal periods as required under the
12 Labor Code. Employees were consistently required to work through their meal periods which they
13 were consistently denied. Employees were also required to take meal periods after working well
14 beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more
15 than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal
16 period as required by law.

17 60. Moreover, Defendants failed to compensate Employees for each meal period not
18 provided or inadequately provided, as required under Labor Code § 226.7. Additionally, as
19 detailed above, when Defendants did pay meal period premiums, they did so at the normal regular
20 rate of pay without factoring in all forms or remuneration/compensation or by otherwise
21 incorrectly calculating the regular rate.

22 61. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in an
23 amount equal to one (1) hour of wages at their effective regular rates of pay for each meal period
24 not provided or deficiently provided, a sum to be proven at trial.

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1 **FOURTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

4 62. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
5 full herein.

6 63. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
7 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
8 not less than ten (10) minutes for each consecutive four (4) hour shift.

9 64. Defendants failed to provide Employees with timely rest breaks of not less than ten
10 (10) minutes for each consecutive four (4) hour shift.

11 65. Additionally, under *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 260
12 (2016) “[D]uring required rest periods, employers must relieve their employees of all duties and
13 relinquish any control over how employees spend their time.” Defendants did not allow Employees
14 to leave the Defendants’ location and this is directly at odds with *Augustus*, as it “tethered
15 [employees] by time and policy to a particular location” and therefore fails to relieve employees of
16 all work duties and employer control during rest periods. *Augusts*, 2 Cal.5th at 269.

17 66. Moreover, Defendants did not compensate Employees with an additional hour of
18 pay at each Employee’s effective hourly rate for each day that Defendants failed to provide them
19 with adequate rest breaks, as required under Labor Code § 226.7. Additionally, as detailed above,
20 when Defendants did pay rest period premiums, they did so at the normal regular rate of pay
21 without factoring in all forms or remuneration/compensation or by otherwise incorrectly
22 calculating the regular rate.

23 67. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in an
24 amount equal to one (1) hour of wages at their effective regular rates of pay for each day worked
25 without the required rest breaks, a sum to be proven at trial.

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FIFTH CAUSE OF ACTION
FAILURE TO PAY VACATION WAGES
(Against All Defendants)

68. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

69. Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with said contract of employment or policy respecting eligibility or time served.

70. Defendants paid shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of remuneration in the regular rate of pay upon which vacation wages were calculated and paid. Therefore, pursuant to, Plaintiffs and Employees seek to recover penalties pursuant to Labor Code § 227.3.

SIXTH CAUSE OF ACTION
FAILURE TO COMPLY WITH LABOR CODE § 245 *ET SEQ.* AND 246
(Against All Defendants)

71. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

72. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time to Employees, including at the amount, terms, and rate of compensation set forth in said law. At times relevant, Defendants have failed compute the amount due for paid sick time in conformance with the pay calculation under California Labor Code § 246(1).

73. Defendants paid shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than calculating the amount of paid sick time due when sick time is used according to the requirements set forth in California Labor Code § 246(1), Defendants paid sick leave to Employees at a lower

1 rate, in violation of the law.

2 74. Therefore, Plaintiffs and Employees seek to recover penalties pursuant to Labor
3 Code § 245 *et seq.* and §§ 245 *et seq.* and 246.

4 **SEVENTH CAUSE OF ACTION**
5 **VIOLATION OF LABOR CODE § 226(a)**
6 **(Against All Defendants)**

7 75. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
8 full herein.

9 76. 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, total
11 hours worked, and the corresponding number of hours worked at each hourly rate; these statements
12 must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay
13 the employee's wages; or, if wages are paid by cash or personal check, these statements may be
14 given to the employee separately from the payment of wages; in either case the employer must give
15 the employee these statements twice a month or each time wages are paid.

16 77. Defendants failed to provide Employees with accurate itemized wage statements in
17 writing, as required by the Labor Code. Specifically, the wage statements given to Employees, by
18 Defendants, failed to include the above requirements enumerated above. Employees' wage
19 statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed
20 to accurately set forth all applicable hourly rates in effect during the pay period and the
21 corresponding number of hours worked at each such rate in violation of Labor Code § 226 (a)(9).
22 The wage statements provided to Employees were confusing and required Employees to engage in
23 discovery and refer to outside sources to verify whether their pay was correct and potentially
24 resulting in a miscalculation by the Employees. Moreover, Defendants failed in their affirmative
25 obligation to keep accurate records of the correct overtime wages based on proper regular rate
26 calculations that included shift differentials, nondiscretionary commissions, incentive pay, and/or
27 nondiscretionary bonuses earned, and the total amount of compensation of their Employees.
28 Additionally, the wage statements given to Employees by Defendants failed to accurately account

1 for wages, overtime, and premium pay for deficient meal periods and rest breaks, and reflected the
2 incorrect hours worked due to the rounding, all of which Defendants knew or reasonably should
3 have known were owed to Employees, as alleged hereinabove.

4 78. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
5 Employees 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 79. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover the
10 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
11 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding
12 an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs
13 and reasonable attorneys' fees.

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

18 81. Plaintiffs are seeking penalties against Defendants under Labor Code § 226.3, and
19 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be
20 shown according to proof.

21 **EIGHTH CAUSE OF ACTION**

22 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**

23 **AND 1174.5**

24 **(Against All Defendants)**

25 82. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
26 full herein.

27 83. California Labor Code § 1174 requires that all employers shall keep accurate time
28 and wage records for all employees. California Labor Code § 1174.5 further requires that any

1 employee suffering injury due to a willful violation of the aforementioned obligations may seek
2 damages, including civil penalties, from the employer.

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

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

9 **NINTH CAUSE OF ACTION**

10 **FAILURE TO PRODUCE REQUESTED EMPLOYMENT RECORDS UNDER LABOR**

11 **CODE §§ 226 and 1198**

12 **(Against All Defendants)**

13 86. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
14 full herein.

15 87. Pursuant to California Labor Code § 226, current and former employees have the
16 right to inspect or receive a copy of their records pertaining to their employment, upon reasonable
17 request to their employer. Under this statute, an employer that receives a request to inspect or receive
18 a copy of records pertaining to a current or former employee must comply with the request as soon
19 as practicable, but no later than twenty-one (21) calendar days from the date of the request.

20 88. Pursuant to California Labor Code § 1198.5(a), every current and former employee,
21 or his or her representative, has the right to inspect and receive a copy of the personnel records that
22 the employer maintains relating to the employee's performance or to any grievance concerning the
23 employee. Under this statute, upon written request from a current or former employee or his or her
24 representative, an employer must make the contents of those personnel records available for
25 inspection or provide a copy of the personnel records to the current or former employee, or his or
26 her representative, not later than thirty (30) calendar days from the date the employer receives the
27 written request, subject to some limited exceptions. Failure to comply with these requests allows for
28 a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and 226(f).

1 89. Plaintiffs sent written requests through her counsel to Defendants for their payroll
2 records, timecards, and personnel records. However, Plaintiffs have not received all of their
3 requested records as of the date of this Complaint.

4 90. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely
5 produce the required records requested by Plaintiffs.

6 91. On information and belief, Defendants' failure to provide Plaintiffs with all of
7 their requested employment records is not an isolated incident but was instead consistent
8 with Defendants' policy and practice that applied to Plaintiffs and Employees.

9 92. Pursuant to California Labor Code § 1198.5, Plaintiffs and Employees are entitled to
10 a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and costs.

11 93. Pursuant to California Labor Code § 226, Plaintiffs are entitled to a penalty of seven
12 hundred fifty dollars (\$750) from Defendants and attorneys' fees and cost.

13 **TENTH CAUSE OF ACTION**

14 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

15 **IN VIOLATION OF LABOR CODE § 2802**

16 **(Against All Defendants)**

17 94. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
18 full herein.

19 95. Under Labor Code § 2802(a) an employer must indemnify its employees for all
20 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
21 of his or her duties, or of his or her obedience to the directions of the employer.

22 96. Employees incurred necessary expenditures in the performance of their job duties for
23 Defendants, cell phone usage which was necessary to perform their duties under Defendants'
24 employ. From four (4) years prior to the original filing of this lawsuit and continuing to the
25 present, Defendants consistently failed to reimburse Employees for these necessarily incurred
26 business expenses.

27 97. As a result of the unlawful acts of Defendants, Employees have been deprived of
28 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,

1 plus interest and penalties thereon, attorneys' fees, and costs.

2 **ELEVENTH CAUSE OF ACTION**
3 **VIOLATION OF LABOR CODE § 203**
4 **(Against All Defendants)**

5 98. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
6 full herein.

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

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

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

13 102. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
14 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
15 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
16 to thirty (30) days from the date they were due.

17 **TWELFTH CAUSE OF ACTION**
18 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**
19 **(Against All Defendants)**

20 103. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
21 full herein.

22 104. Plaintiffs, on behalf of themselves, Employees, and the general public, brings this
23 claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as
24 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees
25 and the general public. Plaintiffs seek to enforce important rights affecting the public interest within
26 the meaning of Code of Civil Procedure § 1021.5.

27 105. Plaintiffs are "person(s)" within the meaning of Business & Professions Code
28 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive

1 relief, restitution, and other appropriate equitable relief.

2 106. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
3 practices.

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

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

17 109. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
18 violation of the Business & Professions Code § 17200 *et seq.*

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

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

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

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

3 **THIRTEENTH CAUSE OF ACTION**

4 **PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ.***

5 **(Against All Defendants)**

6 113. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
7 full herein.

8 114. Plaintiffs and Employees are aggrieved employees are defined under Labor Code §
9 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
10 alleged violators, Defendants.

11 115. Plaintiffs seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'
12 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the penalty
13 provisions, without limitation, based on the following California Labor Code sections: 201, 202,
14 203, 204, 210, 218.5, 218.6, 223, 226, 226.3, 226.4, 226.7, 227.3, 245, *et seq.*, 246, 510, 512, 558,
15 558.1, 1174, 1174.5, 1182.12 1185, 1194, 1194.2, 1197, 1198, 1198.5 1199, 2698, 2699, *et seq.*,
16 2802.

17 116. The penalties shall be allocated as follows: 75% to the Labor and Workforce
18 Development Agency (LWDA) and 25% to the affected employee.

19 117. Employees also seek any and all penalties and remedies set forth in Labor Code §
20 558, which states:

21
22 (a) Any employer or other person acting on behalf of an employer who violates,
23 or causes to be violated, a section of this chapter or any provision regulating hours
24 and days of work in any order of the Industrial Welfare Commission shall be subject
25 to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
26 underpaid employee for each pay period for which the employee was underpaid in
27 addition to an amount sufficient to recover underpaid wages. (2) For each subsequent
28 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. (3) Wages recovered pursuant to this section shall be paid
to the affected employee.

1 (b) If upon inspection or investigation the Labor Commissioner determines that
2 a person had paid or caused to be paid a wage for overtime work in violation of any
3 provision of this chapter, or any provision regulating hours and days of work in any
4 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.

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

7 118. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
8 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
9 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
10 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
11 deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the extent
12 that Labor Code § 226.3 applies, Plaintiffs and Employees also seeks such penalties on.

13 119. Plaintiffs have exhausted their administrative remedy by sending a certified letter to
14 the LWDA and Defendants postmarked on January 9, 2024. The LWDA has not provided notice of
15 its intent to investigate the alleged violations within 65 calendar days of the postmark date of the
16 letters.

17 **RELIEF REQUESTED**

18 WHEREFORE, Plaintiffs pray for the following relief:

- 19 1. For an order certifying this action as a class action;
- 20 2. For compensatory damages in the amount of the unpaid minimum wages for work
21 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
22 the filing of this action, as may be proven;
- 23 3. For liquidated damages in the amount equal to the unpaid minimum wage and
24 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 25 4. For compensatory damages in the amount of all unpaid wages, including overtime
26 and double-time pay, as may be proven;
- 27 5. For compensatory damages in the amount of the hourly wage made by Employees
28 for each missed or deficient meal period where no premium pay was paid therefor from four (4)

1 years prior to the filing of this action, as may be proven;

2 6. For compensatory damages in the amount of the hourly wage made by Employees
3 for each day requisite rest breaks were not provided or were deficiently provided where no
4 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
5 be proven;

6 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

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

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

10 10. For penalties pursuant to Labor Code § 227.3, as may be proven;

11 11. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;

12 12. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;

13 13. For restitution for unfair competition pursuant to Business & Professions Code
14 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

15 14. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;

16 15. For compensatory damages in the amount of all previously unreimbursed business
17 expenditures necessarily incurred by Employees in the discharge of their job duties of Defendants
18 from four (4) years prior to the original filing of this action, as may be proven;

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

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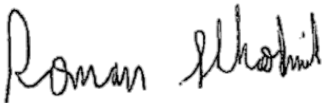
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- 1 17. For all general, special, and incidental damages as may be proven;
2 18. For an award of pre-judgment and post-judgment interest;
3 19. For an award providing for the payment of the costs of this suit;
4 20. For an award of attorneys' fees; and
5 21. For such other and further relief as this Court may deem proper and just.

6
7 DATED: March 14, 2024

D.LAW, INC.

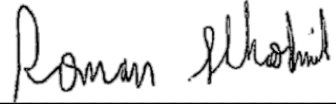
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9 By 
10 Emil Davtyan
11 David Yeremian
12 Roman Shkodnik
13 Amanda Fazio
14 Attorneys for Plaintiffs
15 OSMIN CHAVARRIA MEJIA,
16 ELMER CHAVARRIA MEJIA, and
17 RAFAEL MENJIVAR
18 CASTELLANOS
19 and the putative class
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DEMAND FOR JURY TRIAL

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

DATED: March 14, 2024

D.LAW, INC.

By 

Emil Davtyan
David Yeremian
Roman Shkodnik
Amanda Fazio
Attorneys for Plaintiffs
OSMIN CHAVARRIA MEJIA,
ELMER CHAVARRIA MEJIA, and
RAFAEL MENJIVAR
CASTELLANOS
and the putative class

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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.

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[X] (ONLY BY ELECTRONIC TRANSMISSION) I electronically served the foregoing document in PDF format. I caused a true copy of the foregoing document(s) listed above to be served by electronic email transmission at the time shown on each transmission, to each interested party at the email address(es) shown above. Each transmission was reported as complete and without error.

[] (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

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

Executed on March 14, 2024, at Glendale, California.

Natalia Bermudes
Natalia Bermudes