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David C Mathias

For All Purposes

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Superior Court of California,

County of Tulare

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on behalf of herself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

MARINA BARRIGA, on behalf of herself
and others similarly situated,

Plaintiff,

vs.

MINERAL KING RADIOLOGICAL
MEDICAL GROUP, INC., dba VIP
SPECIALISTS, INC. and dba VISALIA
IMAGING AND OPEN MRI, a California
Corporation; MINERAL KING IMAGING
ASSOCIATES, LLC, a limited liability
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: WCU305834

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
6. Failure to Keep Required Payroll Records Under Labor Code §§ 1174, and 1174.5;
7. Penalties Pursuant to Labor Code § 203; and
8. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

1. Plaintiff MARINA BARRIGA, (hereinafter “Plaintiff”) on behalf of herself and all others similarly situated (collectively, “Employees”; individually, “Employee”) complains of MINERAL KING RADIOLOGICAL MEDICAL GROUP, INC., dba VIP SPECIALISTS, INC. and dba VISALIA IMAGING AND OPEN MRI; and MINERAL KING IMAGING ASSOCIATES, LLC, Defendants, and each of them, as follows:

INTRODUCTION

2. Plaintiff brings this action on behalf of herself and all current and former Employees within the State of California who, at any time four (4) years prior to the filing of this lawsuit, are or were employed as non-exempt, hourly employees by MINERAL KING RADIOLOGICAL MEDICAL GROUP, INC., dba VIP SPECIALISTS, INC. and dba VISALIA IMAGING AND OPEN MRI; and MINERAL KING IMAGING ASSOCIATES, LLC; and DOES 1 through 50 (all defendants being collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each of them, violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC) and California Business & Professions Code, and seeks redress therefore.

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

4. Defendants required Plaintiff and the Employees in the Class to perform work while remaining under Defendants' control during their meal breaks. Defendants thus failed to pay

1 Plaintiff and the Class members for all hours worked, and provided them with inaccurate wage
2 statements that prevented Plaintiff and the Class from learning of these unlawful pay practices.
3 Defendants also failed to provide Plaintiff and the Class with lawful meal and rest periods, as
4 employees were not provided with the opportunity to take timely, uninterrupted, and duty-free
5 meal and rest periods as required by the Labor Code.

6 **THE PARTIES**

7 **A. The Plaintiff**

8 5. Plaintiff MARINA BARRIGA has resided in California and during the time period
9 relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within
10 the State of California.

11 **B. The Defendants**

12 6. Defendant MINERAL KING RADIOLOGICAL MEDICAL GROUP, INC., dba
13 VIP SPECIALISTS, INC. and dba VISALIA IMAGING AND OPEN MRI is a California
14 Corporation with its principal executive offices in Visalia, California, and has been listed as the
15 employer on wage statements issued to Plaintiff during the relevant time period. MINERAL
16 KING RADIOLOGICAL MEDICAL GROUP, INC. employed Plaintiff and the Employees in
17 Tulare County, including at Defendants' offices and facilities in Visalia, California, and
18 throughout California. Defendants conduct business throughout California.

19 7. Defendant MINERAL KING IMAGING ASSOCIATES, LLC is a limited liability
20 California Corporation with its principal executive offices in Visalia, California, and has been
21 listed as the employer on the personnel file issued to Plaintiff during the relevant time period.
22 MINERAL KING IMAGING ASSOCIATES, LLC employed Plaintiff and the Employees in
23 Tulare County, including at Defendants' offices and facilities in Visalia, California, and
24 throughout California and Defendants conduct business throughout California.

25 8. The true names and capacities, whether individual, corporate, associate, or
26 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
27 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
28 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants

designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated herein as Does 1 through 50 when their identities become known.

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

JURISDICTION AND VENUE

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

FACTUAL BACKGROUND

11. The Employees who comprise the Class and Collective, including Plaintiff, are nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire Employees who work in nonexempt positions at the direction of Defendants in the State of California. Plaintiff and the Class members were not paid by Defendants for all hours worked and were not paid at the appropriate minimum, regular and overtime rates. Specifically, Plaintiff and

1 Employees were not paid for the time that they worked “pre-shift” and “post-shift” without
2 compensation by spending time to clock in due to insufficient time keeping systems and
3 Defendants’ policies. In addition, Plaintiff and Employees were not paid for all time worked due
4 to Defendants’ rounding policy and practice that resulted in Plaintiff’s and Employees’ time
5 entries to be detrimentally rounded and reflect less time than actually worked. Moreover, Plaintiff
6 and Employees were required or suffered by Defendants to work while clocked out, including
7 while clocked out for meal periods. Plaintiff also contends that Defendants failed to pay Plaintiff
8 and the Class members all wages due and owing, failed to provide meal and rest breaks, and
9 failed to reimburse employees for necessary business expenses, all in violation of various
10 provisions of the California Labor Code and applicable Wage Orders.

11 12. During the course of Plaintiff and the Class members’ employment with
12 Defendants, they were not paid all wages they were owed, including for all work performed and
13 for all overtime hours worked, and were forced to work during their meal and rest breaks to keep
14 labor budgets low.

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

27 14. As a result of the above described daily work demands and pressures to continue
28 working through breaks, and the other wage violations they endured at Defendants’ hands,

1 Plaintiff and the Class members were not properly paid for all wages earned and for all wages
2 owed to them by Defendants, including when working more than eight (8) hours in any given day
3 and/or more than forty (40) hours in any given week. As a result of Defendants' unlawful policies
4 and practices, Plaintiff and Class members incurred overtime hours worked for which they were
5 not adequately and completely compensated. To the extent applicable, Defendants also failed to
6 pay Plaintiff and the Class members at an overtime rate of 1.5 times the regular rate for the first
7 eight hours of the seventh consecutive workday in a week and overtime payments at the rate of 2
8 times the regular rate for hours worked over eight (8) on the seventh consecutive workday, as
9 required under the Labor Code, applicable IWC Wage Orders.

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

14 16. Additionally from at least four (4) years prior to the filing of this lawsuit and
15 continuing to the present, Defendants had a consistent policy or practice of failing to pay
16 Employees overtime compensation at premium overtime rates for all hours worked in excess of
17 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
18 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
19 sections of IWC Wage Orders.

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

27 18. From at least four (4) years prior to the filing of this lawsuit and continuing to the
28 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less

1 than ten (10) minutes for every work period of four (4) or more consecutive hours or major
2 fraction thereof; nor did Defendant pay Employees premium pay for each day on which requisite
3 rest breaks were not provided or were deficiently provided at one hour of wages at each
4 Employee's effective regular rate of pay, for each rest period that Defendants failed to provide or
5 deficiently provided.

6 19. From at least four (4) years prior to the filing of this lawsuit and continuing to the
7 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
8 performance of their job duties for Defendants including, but not limited to, cost of cell phone
9 usage and internet usage which were necessary to perform their duties under Defendants' employ
10 in violation of Labor Code § 2802.

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

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

18 22. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
19 Code §§ 201, 202, 203, 204, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,
20 1194.2 1197, 1198.5, 1199, and 2802.

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

24 **CLASS ALLEGATIONS**

25 24. Plaintiff brings this class action on behalf of herself and all others similarly situated
26 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows:
27 all individuals employed by Defendants, at any time within four (4) years of the filing of this
28 lawsuit and have been employed by Defendants within the State of California.

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

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

f. Subclass 6. Failure to Reimburse for Necessary Business Expenditures Subclass. All Class members who were subject to Defendants failing to reimburse for expenses necessarily incurred in the performance of Employees' job duties for Defendants which were necessary to perform their duties under Defendants' employ.

g. Subclass 7. 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 or separation.

h. Subclass 8. 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.

1 26. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
2 modify the class description with greater particularity or further division into subclasses or
3 limitation to particular issues.

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

7 **A. Numerosity**

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

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

16 **B. Commonality**

17 30. There are questions of law and fact common to the class that predominate over any
18 questions affecting only individual class members. These common questions of law and fact
19 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 provide Employees with requisite rest breaks or premium pay

1 in lieu thereof;

2 f. Whether Defendants violated Labor Code §§ 1174 and 1174.5;

3 g. Whether Defendants failed to reimburse Employees for necessary business
4 expenses;

5 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
6 wages and compensation due and owing at the time of termination or separation of
7 employment;

8 i. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

9 j. Whether Employees are entitled to equitable relief pursuant to Business and
10 Professions Code § 17200 *et seq.*

11 **C. Typicality**

12 31. The claims of the named plaintiff are typical of those of the other Employees.

13 Employees all sustained injuries and damages arising out of and caused by Defendants' common
14 course of conducts in violation of statutes, as well as regulations that have the force and effect of
15 law, as alleged herein.

16 **D. Adequacy of Representation**

17 32. Plaintiff will fairly and adequately represent and protect the interest of Employees.

18 Counsel who represents Employees are experienced and competent in litigating employment class
19 actions.

20 **E. Superiority of Class Action**

21 33. A class action is superior to other available means for the fair and efficient

22 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
23 questions of law and fact common to all Employees predominate over any questions affecting only
24 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
25 Defendants' illegal policies or practices of failing to compensate Employees properly.

26 34. Class action treatment will allow those persons similarly situated to litigate their
27 claims in the manner that is most efficient and economical for the parties and the judicial system.

28 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

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

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

36. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of misstating Employees' time records and failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with working during meal breaks, and worked "pre-shift" and "post-shift" without compensation by spending time to clock in due to insufficient time keeping systems and Defendants' policies. Further, Plaintiff and Employees were not paid for all time worked due to Defendants' rounding policy and practice that resulted in Plaintiff's and Employees' time entries to be detrimentally rounded and reflect less time than actually worked. Additionally, Defendants had a consistent policy of failing to pay Employees for hours worked during alleged meal periods for which Employees were consistently denied, as also addressed herein. Moreover, Defendants did not pay Plaintiff and Employees at the applicable minimum wage for all hours worked. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

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

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

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

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

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

7
8 40. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
9 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

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

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

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

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

21 **SECOND CAUSE OF ACTION**

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

23 **(Against All Defendants)**

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

26 45. By their conduct, as set forth herein, Defendants violated California Labor Code §
27 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
28 (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

1 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
2 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
3 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
4 paying Employees wages for all hours worked including time off the clock working “pre-shift”
5 and “post-shift” without compensation by spending time to clock in due to insufficient time
6 keeping systems and Defendants’ policies. Further, Plaintiff and Employees were not paid for all
7 time worked due to Defendants’ rounding policy and practice that resulted in Plaintiff’s and
8 Employees’ time entries to be detrimentally rounded and reflect less time than actually worked.
9 Additionally, Defendants had a consistent policy of failing to pay Employees for hours worked
10 during alleged meal periods for which Employees were consistently denied. Employees regularly
11 worked over 8 hours on a given day without receiving overtime compensation.

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

18 47. Employees have been damaged by these violations of California Labor Code §§
19 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

20 48. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
21 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
22 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
23 reasonable attorneys’ fees and costs.

24 **THIRD CAUSE OF ACTION**

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

26 **(Against All Defendants)**

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

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

6 51. Defendants failed to provide Employees with meal periods as required under the
7 Labor Code. Employees were consistently required to work through their meal periods which they
8 were consistently denied. At all relevant times herein, Defendants would require Plaintiff and
9 Employees to clock out for their meal periods prior to the fifth hour of work but continue working
10 and take a later meal period. Employees were also required to take meal periods after working
11 well beyond the five (5) hour shifts. During meal periods, Employees would be disrupted or
12 interrupted by Defendants with work related requests and communications. Furthermore,
13 Employees were regularly required to work for more than 10 hours in a given shift without
14 receiving a second uninterrupted thirty (30) minute meal period as required by law.

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

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

26 ///

27 ///

28 ///

FOURTH CAUSE OF ACTION
REST-BREAK LIABILITY UNDER LABOR CODE § 226.7
(Against All Defendants)

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

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

56. Defendants failed to provide Employees with timely rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift or major fraction thereof. In addition, when Plaintiff and Employees did receive the opportunity to take rest periods, Defendants did not permit Plaintiff and Employees to leave the work premises and would interrupt Plaintiff and Employees during rest periods with work related requests and communications.

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

58. Moreover, Defendants failed to compensate Employees for each rest period not provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee a rest period in accordance with this section, the employer shall pay the employee one hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided. Defendants failed to compensate the Employees in the Class for each rest period not provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage Order.

///

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

4 **FIFTH CAUSE OF ACTION**
5 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**
6 **IN VIOLATION OF LABOR CODE § 2802**
7 **(Against All Defendants)**

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

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

13 62. Employees incurred necessary expenditures in the performance of their job duties
14 for Defendants, namely the cost of cell phone and internet usage, which were necessary to perform
15 their duties under Defendants' employ. From four (4) years prior to the original filing of this
16 lawsuit and continuing to the present, Defendants consistently failed to reimburse Employees for
17 these necessarily incurred business expenses.

18 63. As a result of the unlawful acts of Defendants, Employees have been deprived of
19 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
20 plus interest and penalties thereon, attorneys' fees, and costs.

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

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

27 65. 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 66. During the course of Plaintiff's and Employees' employment, Defendants
4 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
5 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
6 overtime, and premium pay as discussed above.

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

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

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

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

19 **SEVENTH CAUSE OF ACTION**

20 **VIOLATION OF LABOR CODE § 203**

21 **(Against All Defendants)**

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

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

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

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

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

EIGHTH CAUSE OF ACTION

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

(Against All Defendants)

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

77. Plaintiff, on behalf of herself, Employees, and the general public, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

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

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

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

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

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

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

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

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

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;

/ / /

1 3. For liquidated damages in the amount equal to the unpaid minimum wage and
2 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;

3 4. For compensatory damages in the amount of the hourly wage made by Employees
4 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
5 years prior to the filing of this action, as may be proven;

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

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

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

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

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

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

21 11. For all general, special, and incidental damages as may be proven;

22 12. For an award of pre-judgment and post-judgment interest;

23 13. For an award providing for the payment of the costs of this suit;

24 14. For an award of attorneys' fees; and

25 15. For such other and further relief as this Court may deem proper and just.

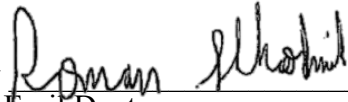
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1 DATED: February 5, 2024

D.Law, Inc.

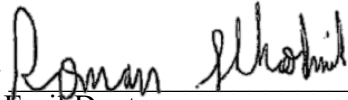
2 By 
3 Emil Davtyan
4 David Yeremian
5 Roman Shkodnik
6 Robert Payaslyan
7 Attorneys for Plaintiff
8 MARINA BARRIGA
9 and the putative class
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1 **DEMAND FOR JURY TRIAL**

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

3
4 DATED: February 5, 2024

D.Law, Inc.

5 By 
6 Emil Davtyan
7 David Yeremian
8 Roman Shkodnik
9 Robert Payaslyan
10 Attorneys for Plaintiff
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