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on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

SHAHISTA KHAN, an individual, on behalf
of herself and others similarly situated,

Plaintiff,

vs.

BAY AREA COMMUNITY HEALTH, a
California nonprofit corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 24CV063415

CLASS ACTION

Assigned for All Purposes To:

Hon. Noël Wise

Dept.: 21

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

DEMAND FOR JURY TRIAL

Original Complaint filed: February 9, 2024

1 Plaintiff SHAHISTA KHAN (hereinafter “Plaintiff”), on behalf of herself and all other
2 similarly situated non-exempt, hourly employees employed by Defendants in California during the
3 relevant period (collectively, “Employees”; individually, “Employee”) complains of Defendants as
4 follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of herself and all current and former
7 Employees within the State of California who, at any time from December 18, 2021, are or were
8 employed as non-exempt, hourly employees by Defendants BAY AREA COMMUNITY
9 HEALTH, a California nonprofit corporation; and DOES 1 through 50 (all defendants being
10 collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants violated various
11 provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission
12 (IWC), and California Business & Professions Code, and seeks redress for these violations.

13 2. Plaintiff worked as a medical assistant at one of Defendants’ facilities and locations
14 in Fremont, California. She and the other Class members were employed by Defendants as non-
15 exempt, hourly employees at Defendants’ locations and facilities in California, including in
16 positions related to providing health and social services to Defendants’ patient customers. Plaintiff
17 worked at Defendants’ behest without being paid all wages due and without being provided all
18 required breaks. More specifically, Plaintiff and the other similarly situated Class members were
19 employed by Defendants and (1) shared similar job duties and responsibilities (2) were subjected
20 to the same policies and practices (3) and endured similar violations at the hands of Defendants as
21 the other Employees who served in similar and related positions.

22 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
23 and failed to record accurate time worked by these Employees, failed to pay them at the
24 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
25 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that
26 prevented them from learning of these unlawful pay practices. Defendants also failed to provide
27 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain
28 under Defendants’ control and were not provided with the opportunity to take full uninterrupted,

1 timely, and duty-free rest periods and meal breaks, as required by the Labor Code and the
2 applicable paragraphs of the IWC Wage Orders.

3 4. Defendant BAY AREA COMMUNITY HEALTH is a California nonprofit
4 corporation that lists its principal address with the California Secretary of State in Fremont,
5 California. Defendant BAY AREA COMMUNITY HEALTH is listed as the employer on the
6 wage statements issued to Plaintiff by Defendants on a bi-weekly basis, and upon information and
7 belief to other Class members, with the same Fremont, California address. Upon information and
8 belief, BAY AREA COMMUNITY HEALTH operates various facilities where their California
9 Employees are based, including the Fremont, California clinic where Plaintiff worked. On
10 information and belief, Defendants maintain other operations and facilities in Alameda and Santa
11 Clara Counties California.

12 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
13 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
14 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
15 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
16 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
17 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Alameda County,
18 where Defendants operate and provide health and social services to California customers.

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

27 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
28 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried

1 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
2 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
3 all respects as the employers or joint employers of Employees. Defendants, and each of them,
4 exercised control over the wages, hours or working conditions of Employees, created and
5 implemented the policies and practices that governed the employment of Plaintiff and the Class
6 members and dictated their job duties and responsibilities, or otherwise suffered or permitted
7 Plaintiff and the other Employee Class members to work, or engaged, thereby creating a common
8 law employment relationship, with the Employee Class members. Therefore, Defendants, and each
9 of them, employed or jointly employed the Employee Class members.

10 **FACTUAL BACKGROUND**

11 8. The Employees who comprise the Class, including Plaintiff, are non-exempt
12 employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare
13 Commission (“IWC”). During the period of December 18, 2021, through its resolution, Plaintiff
14 and the Class members were either not paid by Defendants for all hours worked or were not paid
15 at the appropriate minimum, regular and overtime rates, including for meal period and rest break
16 premium payments. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class
17 members all wages due and owing, including by miscalculating wages owed and by requiring off
18 the clock work, failing to provide meal and rest breaks, and failing to furnish accurate wage
19 statements and timely pay all wages owed, all in violation of various provisions of the California
20 Labor Code and applicable paragraphs of the IWC Wage Orders.

21 9. During the course of Plaintiff and the Class members’ employment with
22 Defendants, they were not paid all wages they were owed, including for all work performed
23 (resulting in “off the clock” work) and for all their overtime hours worked, or were not paid at the
24 correct rates. This has resulted in systematic and ongoing violations of the California Labor Code
25 and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-
26 exempt, hourly employees as food and customer-related workers based out of Defendants’
27 facilities in California.

28 10. Plaintiff was employed by Defendants as a medical assistant at Defendants’

1 Fremont, California clinic facility. Plaintiff generally worked forty hours per week, five days per
2 week, which resulted in shifts of approximately eight hours in duration. Plaintiff's shifts were
3 generally scheduled from 8:00 a.m. to 5:00 p.m. or longer.

4 11. The nature of Defendants' operations and its policies and practices require that
5 Employees endure significant off-the-clock work. Defendants' facilities included timekeeping
6 systems incorporating electronic recording of time punches by Employees logging on to the ADP
7 website on Defendants' computers to record their time entries. Employees were prohibited from
8 clocking in more than five minutes before their scheduled start time. Accordingly, when Plaintiff
9 arrived more than five minutes before her scheduled shift in order to complete the volume of
10 work assigned to her, she was not permitted to record any time worked before approximately 7:55
11 a.m. Some of this work included spending several minutes checking and responding to emails and
12 answering phone calls. In addition, prior to clocking in, Employees were required to undergo
13 COVID screenings. This consisted of temperature scans and signing a log attesting to having
14 gone through the screening process. This process could take an additional two to five minutes to
15 complete during which Employees were required to remain under Defendants' control without
16 being compensated for these hours worked. Only after these steps were completed could
17 Employees access Defendants' computers to access the ADP website to record their time entries.
18 Owing to Defendants' uniformly applied policy that Employees not clock-in more than five
19 minutes early, all this time went unrecorded. Accordingly, Plaintiff was not compensated for all
20 of her actual time worked and under Defendants' control.

21 12. The failure to maintain accurate timekeeping and payroll records perpetrated by
22 Defendants has also been exacerbated by other off the clock work Defendants required their
23 Employees to endure. Plaintiff was habitually compelled to begin working before clocking in to
24 assist coworkers or patients. Defendants did not permit Employees to clock in earlier than five
25 minutes before the scheduled shift time. Thus, if Plaintiff arrived earlier and there was work to do
26 assisting coworkers or patients, Plaintiff would begin working without clocking in despite the fact
27 she was under Defendants' control or otherwise already performing job duties. Accordingly,
28 Plaintiff was not permitted to record her time entries from the moment she started working.

1 13. In addition, Plaintiff and other Employees' meal periods and rest breaks were
2 routinely interrupted or cut short to attend to pressing work demands. Defendants required that
3 Employees always carry a work phone and promptly respond to any communications. Thus,
4 Plaintiff's meal periods and rest breaks were routinely interrupted or shortened by work-related
5 calls to the phone. Due to understaffing and Defendants' requirements that Employees be relieved
6 to take their breaks, Plaintiff was frequently unable to leave the facility for her breaks and had to
7 take on-duty breaks.

8 14. Additionally, Defendants required that Employees carry their work phones home
9 and promptly respond to work communications after their shifts ended. Thus, Plaintiff and the
10 Class members were also required to work or otherwise remain under Defendants' control after
11 their shift end times, including on site and through after-hours work-related communications and
12 other work requirements.

13 15. Defendants followed a similar unlawful practices, upon information and belief, in
14 connection with other Employees in a concerted effort to limit and restrict regular and overtime
15 hours earned by and owing to Plaintiff and the other Class members. Time worked off the clock
16 also caused Plaintiff and other Class members to work beyond eight hours in a shift. As a result
17 of the above-described off the clock work, Defendants failed to pay Plaintiff and Class members
18 overtime for several minutes to hours at the end of work shifts which Defendants did not record
19 in any timekeeping or payroll records.

20 16. Defendants also paid Plaintiff and the other Class members various forms of
21 bonuses and shift differentials, along with travel stipends and other forms of remuneration above
22 and beyond their regular hourly rates. Specifically, all Employees, regardless of whether they
23 actually travelled, received "travel stipends" which effectively functioned as bonuses. However,
24 despite requiring Plaintiff and the Class members to work extended shifts of over eight hours,
25 Defendants both failed to pay for all overtime hours actually worked and, upon information and
26 belief, failed to pay that overtime at the correct rate. More specifically, to the extent Defendants
27 paid both overtime and a bonus or shift differential to Plaintiff and the Class members in the same
28 pay period, Defendants miscalculated and underpaid overtime hours by failing to include all

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

5 17. Plaintiff was therefore not paid for all her hours worked at the required minimum,
6 overtime and double time wage rates due to Defendants' policy and practice of requiring her to
7 work off the clock and without pay. With work shifts generally scheduled for eight hours or
8 more, this unpaid off the clock work resulted in Plaintiff and the Class members working past
9 eight hours on a shift, which required that they be paid at the correct overtime rate of 1.5 times
10 their regular rate. Defendants thus systematically underpaid Plaintiff and the Class members by
11 failing to pay them at the required overtime rates for all hours over eight in a work shift or over
12 forty in a work week, and all hours over twelve in a day at the required double time rate. Upon
13 information and belief, the Class members were bound by similar scheduling and work policies
14 which Defendants required them to follow and endured similar violations at Defendants' hands as
15 Plaintiff.

16 18. Defendants have either failed to maintain timekeeping records for Plaintiff that
17 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants'
18 required and the actual hours Plaintiff worked, or have otherwise declined to produce them to
19 Plaintiff in response to a timely and lawful request. By failing to pay for all hours worked,
20 Defendants have committed knowing and intentional ongoing violations of the record keeping
21 requirements under the Labor Code §§ 226 and 1174.

22 19. As a result of the above-described unlawful requirements to work off the clock,
23 the failure to accurately record all hours worked and the other wage violations they endured at
24 Defendants' hands, Plaintiff and the Class members were not properly paid all wages earned and
25 all wages owed to them by Defendants, including when working more than eight hours in any
26 given day and/or more than forty hours in any given week. As a result of Defendants' unlawful
27 policies and practices, Plaintiff and Class members incurred overtime hours worked for which
28 they were not adequately and completely compensated, in addition to the hours they were

1 required to work off the clock at their regular rates.

2 20. The failure to pay for all hours worked and underpayment of wages to Plaintiff
3 and the Class members is and has been a direct consequence of Defendants' unlawful
4 compensation policies and practices, which upon information and belief applied uniformly to the
5 Class members working at Defendants' locations and facilities. As a result of the above-described
6 unlawful requirements to work off the clock, the failure to accurately record all hours worked and
7 pay wages at the correct rates, the failure to compensate employees for time under Defendants'
8 control and the other wage violations they endured at Defendants' hands, Plaintiff and the Class
9 members were not properly paid all wages earned and all wages owed to them by Defendants,
10 including when working more than eight hours in any given day and/or more than forty hours in
11 any given week.

12 21. Therefore, from at least December 18, 2021, and continuing to the present,
13 Defendants had a consistent policy or practice of failing to pay Employees for all hours worked
14 and failing to pay minimum wages for all time worked, as required by California law. Also, from
15 at least December 18, 2021, and continuing to the present, Defendants had a consistent policy or
16 practice of failing to pay Employees overtime compensation at premium overtime rates for all
17 hours worked in excess of eight hours a day and/or forty hours a week, and double-time rates for
18 all hours worked in excess of twelve hours a day, in violation of Labor Code § 510 and the
19 corresponding sections of IWC Wage Orders. To the extent Defendants paid Plaintiff and the
20 Class members bonuses and shift differentials and other forms of remuneration above and beyond
21 their hourly pay, upon information and belief Defendants miscalculated and therefore underpaid
22 any overtime they paid during these pay periods by failing to include all forms of remuneration in
23 the regular rate used to calculate and pay overtime.

24 22. Defendants also failed to provide Plaintiff and the Class members with their
25 required meal periods and the at least two ten-minute rest breaks required for scheduled shifts of
26 eight hours. Demanding workloads contributed to Defendants' common policy of failing to
27 provide lawful meal periods to Plaintiff and the Class members, as required under the Labor Code
28 and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically failed to

1 authorize and permit Plaintiff and the employee Class Members to take all required 10-minute
2 rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

3 23. More specifically, Plaintiff worked shifts that entitled her to at least one meal
4 period, but Defendants' managers required Plaintiff and the Class members to prioritize work over
5 taking lawful meal periods. To whatever extent there was ever a schedule for meal periods, it went
6 by the wayside quickly as there always seemed to be a patient or coworker that needed assistance.
7 Constant short-staffing led to systematically late meal periods if they were provided at all, and on-
8 duty meal periods that were incessantly interrupted by patient and management demands and
9 required job duties and tasks. Moreover, having to carry her assigned work phone at all times,
10 including during meal periods and rest breaks, and having to promptly respond to work
11 communications interfered with Plaintiff's ability to take full and uninterrupted meal periods and
12 rest breaks. The heavy workload and management expectations also contributed to Employees
13 working through meal periods or not taking them or taking them late so work could be
14 accomplished or they were otherwise required to remain under Defendants' control during meal
15 periods.

16 24. Therefore, meal period violations systematically occurred throughout all of
17 Plaintiff's work shifts where Defendants both failed to provide a lawful meal period and meal
18 premium payment. To the extent Defendants ever did pay Plaintiff a meal period premium, they
19 failed to include all forms of remuneration beyond hourly wages in the regular hourly rate used to
20 pay the one-hour premium payment. Upon information and belief, the other Class members were
21 subjected to similar unlawful policies and practices and endured similar violations as Plaintiff.

22 25. Defendants thus failed to provide all the legally required unpaid, off-duty meal
23 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
24 members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
25 members were required to perform work as ordered by Defendants or otherwise remain under
26 Defendants' control for more than five hours during a shift, or ten hours in a shift, but were often
27 required to do so without receiving a lawful, timely, and duty-free 30-minute meal breaks.
28 Additionally, as addressed above, Defendants followed a practice of requiring off the clock work,

1 in a manner that would impact when Employees were to receive meal periods and rest breaks,
2 thus leading to further violations.

3 26. As a result, Defendants' failure to provide Plaintiff and the Class members with all
4 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
5 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants also
6 failed to pay Employees "premium pay," i.e. one hour of wages at each Employee's effective
7 hourly rate of pay, for each meal period or rest break that Defendants failed to provide or
8 deficiently provided. Upon information and belief, if and when Defendants did pay any meal
9 period premiums, they failed to include all forms of remuneration in the regular rate used to
10 calculate and pay it.

11 27. Therefore, from at least December 18, 2021, and through to the present, Plaintiff
12 and the Class members were unable to take off-duty breaks or were otherwise not provided with
13 the opportunity to take required meal breaks due to Defendants' policies and practices. On the
14 occasions when Plaintiff and the Class members were provided with a meal period, it was often
15 untimely or interrupted, or was impermissibly shortened, and Employees were not provided with
16 one hour's wages in lieu thereof. Meal period violations thus occurred in one or more of the
17 following manners:

- 18 (a) Class members were not provided full thirty-minute duty free meal periods
19 for work days in excess of five hours and were not compensated one hour's
20 wages in lieu thereof, all in violation of, among others, Labor Code §§
21 226.7, 512, and the applicable Industrial Welfare Commission Wage
22 Order(s);
- 23 (b) Class members were not provided second full thirty-minute duty free meal
24 periods for work days in excess of ten hours;
- 25 (c) Class members were required to work through at least part of their daily
26 meal period(s);
- 27 (d) Meal periods were provided after five hours of continuous work during a
28 shift; and

1 (e) Class members were restricted in their ability to take a full thirty-minute
2 meal period and were not permitted to leave their work premises during
3 meal periods and were otherwise required to remain under Defendants'
4 control during meal periods.

5 28. Defendants also failed to authorize and permit Plaintiff and the Class members to
6 take duty-free, net ten minute rest breaks for every four hours of shift work, or major fraction
7 thereof. There were similar issues with the required net ten-minute rest breaks that Plaintiff and
8 the Class members were unable to take as with meal periods. Defendants made no efforts or
9 provided no emphasis on authorizing and permitting Employees to take net ten-minute rest breaks
10 for every four hours of work.

11 29. Given the constant and ongoing job demands she faced and Defendants' failure to
12 adequately staff its facilities to permit employees to take breaks, Plaintiff was compelled to
13 remain on the premises performing job-related duties while also remaining under Defendants'
14 control during times when she was supposed to be enjoying a duty-free rest break. By uniformly
15 requiring Plaintiff and the other similarly situated co-workers to remain under Defendants'
16 control and on premises during rest breaks, Defendants committed systematic and ongoing rest
17 break violations. To the extent Defendants paid any rest break premium payments under Labor
18 Code § 226.7 to Plaintiff or Class members these payments failed to include all forms of
19 remuneration, including shift differentials and bonuses and premium payments to Plaintiff, in the
20 regular hourly rate at which they paid the rest break premiums.

21 30. Defendants' management did not emphasize the requirement to provide at least
22 one ten-minute duty-free rest period for each four-hour duty period, or major fraction thereof. If
23 and when Plaintiff was permitted to take a ten-minute rest break on a shift, she was not permitted
24 to take a second one or a third one or any breaks were untimely or impermissibly shortened.
25 Further violations occurred as Plaintiff and the Class members were required to remain under
26 Defendants' control by not being able to leave the premises and by Defendants' requirement that
27 they remain ready to respond to work requirements and job demands.

1 31. Therefore, Defendants failed to authorize and permit Class members to take all
2 their required rest breaks. Plaintiff and the other similarly situated Class members were either not
3 authorized permitted the opportunity to take a rest break, or were required to remain under
4 Defendants' control and respond to instructions and job demands. Defendants also failed to
5 authorize and permit Employees to leave the property premises during rest breaks, or else
6 prevented them from doing so, thus further evidencing Defendants' policy and practice of
7 requiring Plaintiff and the Class members to remain under their control during required off-duty
8 rest breaks.

9 32. Defendants' policies and practices thus systematically deny and denied Plaintiff
10 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal
11 periods. The California Supreme Court has instructed that the rest period requirement obligates
12 employers to permit and authorize employees to take-off-duty rest periods. That is, during rest
13 periods employers must relieve employees of all duties and relinquish control over how
14 employees spend their time. Plaintiff and the Class members were and are under Defendants'
15 control when they are working through rest breaks, and Defendants failed to schedule or account
16 for required first, second, and third rest breaks during the shifts Plaintiff and the Class members
17 generally worked.

18 33. Plaintiff and the Employees in the Class were not authorized and permitted to take
19 lawful rest periods, were systematically required by Defendants to work through or during breaks,
20 and were not provided with one hour's wages in lieu thereof. They were required to remain on
21 duty during breaks or portions of their breaks, thus making them either untimely or shortened and
22 on-duty, and they were also prevented from leaving the premises during rest breaks under
23 Defendants' policies and practices. Rest period violations therefore arose in one or more of the
24 following manners:

- 25 (a) Class members were required to work without being provided a minimum
26 ten minute rest period for every four hours or major fraction thereof worked
27 and were not compensated one hour of pay at their regular rate of
28 compensation for each workday that a rest period was not provided, and to

1 the extent Defendants paid any premiums, they failed to include all forms of
2 remuneration in the regular rate used to calculate and pay them.

3 (b) Class members were not authorized and permitted to take timely rest periods
4 for every four hours worked, or major fraction thereof; and

5 (c) Class members were required to remain on duty and under Defendants'
6 control during rest periods or otherwise had their rest periods interrupted by
7 work demands.

8 34. From at least December 18, 2021, and continuing to the present, Defendants have
9 also consistently violated Labor Code § 221 by unlawfully collecting or deducting the Employees'
10 earned wages, including by requiring off the clock work during breaks and before and after work
11 shifts and by miscalculating the regular rate and accordingly underpaying overtime wages and
12 meal and rest break premiums. By not compensating Employees for all hours worked and under
13 Defendants' control at the correct rates, Defendants unlawfully deducted wages earned by and
14 owed to Plaintiff and the Class members, in violation of Labor Code § 221.

15 35. Defendants also violated California Labor Code § 246 by not providing all
16 required paid sick days to Plaintiff and the similarly aggrieved Employees. Labor Code § 246
17 provides that an Employee who "works in California for the same employer for 30 or more days
18 within a year from the commencement of employment is entitled to paid sick days as specified in
19 this section." Paid sick time for nonexempt employees shall be calculated in the same manner as
20 the regular pay rate for the workweek in which the employee uses the paid sick time. Defendants
21 failed to provide Plaintiff and the other similarly Aggrieved Employees with all their required and
22 earned sick days paid at the correct rate of pay, in violation of Labor Code § 246. Additionally
23 and upon information and belief, Defendants have failed to provide COVID-19 supplemental sick
24 leave to the Class members during the relevant time period, including by failing to provide two
25 work weeks of COVID-19 supplemental paid sick leave paid at the correct rates as required under
26 Labor Code §§ 248.1 and 248.2 and including damages and penalties as these sections are
27 enforced through Labor Code § 248.5, which requires that: "If paid sick days were unlawfully
28 withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or

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

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

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

- 22 (a) failing to pay all wages owed to Class members who either were discharged,
23 laid off, or resigned in accordance with the requirements of Labor Code §§
24 201, 202, 203;
- 25 (b) failing to pay all wages owed to the Class members twice monthly in
26 accordance with the requirements of Labor Code § 204;
- 27 (c) failing to pay Class members all wages owed, including all meal and rest
28 period premium wages, and failing to pay them at the regular rate of

1 compensation;

2 (d) failing to maintain accurate records of Class members' hours worked and
3 earned wages and meal periods in violation of Labor Code §§ 226 and
4 1174(d) and section 7 of the applicable IWC Wage Orders; and

5 (e) failing to produce timekeeping records in response to Plaintiff's timely and
6 lawful request to receive them under these authorities.

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

24 39. Defendants also provided Plaintiff and the Class members with wage statements
25 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
26 For the same reasons as explained above, Plaintiff and the Class members were provided with
27 unlawful wage statements that failed to reflect all hours worked and failed to pay for all overtime
28 hours or failed to pay overtime wages at the correct overtime premium rate, and Defendants

1 miscalculated meal and rest break premiums, and sick time if and when they did pay them.
2 Defendants followed this unlawful policy and practice even though both Plaintiff and Defendants
3 were aware that Plaintiff and the Class members worked more total hours than were reflected on
4 the wage statements, including overtime hours, and were underpaid by regular rate miscalculation.
5 Plaintiff and the Employees in the Class were unable to discern from their wage statements alone
6 the actual hours they worked in total during a pay period and the rates they were paid for those
7 hours worked.

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

17 41. Defendants also required Plaintiff and the Class members to work hours off the
18 clock for which they were not compensated. They were also required to endure off the clock work
19 addressed above during interrupted or otherwise on-duty meal and rest periods and were not
20 provided with sick pay and supplemental sick leave and were subjected to systematic off the clock
21 work. Defendants also failed to pay all overtime premium wages owed for work conducted on a
22 work shift and a workday or failed to pay it at the correct rate, as addressed above. Therefore,
23 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to
24 Plaintiff and other similarly situated Employees at the time of their termination or within seventy-
25 two hours of their resignation, as required by California wage-and-hour laws, including under
26 Labor Code § 203.

27 42. From at least December 18, 2021, and continuing to the present, Defendants have
28 regularly required Plaintiff and the Class members to incur necessary business expenses in the

1 course of performing their required job duties without reimbursement. These included the cell
2 phone-related expenses Plaintiff incurred in responding to calls from management on her personal
3 phone and mileage expenses Plaintiff incurred in traveling for work purposes. Plaintiff and the
4 Class members must be reimbursed for these necessary business expenses under Labor Code §
5 2802, and Defendants systematically failed to do so.

6 43. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
7 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4,
8 226.7, 246, 248.1, 248.2, 248.5, 351, 354, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185,
9 1194, 1194.2 1197, 1198, 1198.5, 1199, 2802, 2810.5, and 2698 *et seq.*, and California Code of
10 Regulations, Title 8, section 11000 *et seq.*

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

15 CLASS ALLEGATIONS

16 45. Plaintiff brings this class action on behalf of herself and all others similarly situated
17 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the Class” or
18 “Class members”) defined as follows: “All individuals employed by Defendants at any time
19 during the period of December 18, 2021, and ending on a date as determined by the Court (“the
20 Class Period”), and who have been employed as non-exempt, hourly employees within the State of
21 California.” This includes all hourly health and social services employees and those in similar and
22 related positions. Further, Plaintiff seeks to represent the Subclasses composed of and defined as
23 follows:

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

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

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

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

8 e. Subclass 5. Wage Statement Subclass. All Class members who, within the
9 applicable limitations period, were not provided with accurate itemized wage statements.

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

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

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

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

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

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

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

5 47. Defendants, as a matter of company policy, practice and procedure, and in violation
6 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,
7 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
8 in a practice whereby Defendants failed to correctly calculate and pay compensation for the time
9 worked by Plaintiff and the other members of the Class, even though Defendants enjoyed the
10 benefit of this work, required Employees to perform this work and permitted or suffered to permit
11 this work. Defendants have uniformly denied these Class members wages to which these
12 employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in
13 order to unfairly cheat the competition and unlawfully profit.

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

19 **A. Numerosity**

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

26 **B. Commonality**

27 50. There are questions of law and fact common to the Class that predominate over any
28 questions affecting only individual Class members. The common questions are numerous and

1 substantial and flow from Defendants' uniform policies and/or practices of violating the California
2 Labor Code addressed above. As such, these common questions predominate over individual
3 questions concerning each individual Class Member's showing as to his or her eligibility for
4 recovery or as to the amount of damages. These common questions of law and fact include:

- 5 a. Whether Defendants failed to pay Employees minimum wages;
- 6 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 7 c. Whether Defendants failed to pay Employees overtime as required under Labor
8 Code § 510;
- 9 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
10 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
11 premium pay in lieu thereof;
- 12 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
13 Orders, by failing to authorize and permit Employees to take requisite rest breaks
14 or provide premium pay in lieu thereof;
- 15 f. Whether Defendants violated Labor Code § 226(a) by providing Employees with
16 inaccurate wage statements and wage statements that omitted many of the Section
17 226(a) requirements.
- 18 g. Whether Defendants violated Labor Code § 221;
- 19 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
20 wages and compensation due and owing at the time of termination of employment;
- 21 i. Whether Defendants' conduct was willful;
- 22 j. Whether Defendants violated Labor Code § 226 and § 1174 and §1198 and the
23 IWC Wage Orders by failing to maintain accurate records of Class members'
24 earned wages and work periods;
- 25 k. Whether Defendants violated Labor Code § 1194 by failing to compensate all
26 Employees during the relevant time period for all hours worked, whether regular or
27 overtime;
- 28 l. Whether Defendants violated Labor Code § 204 by failing to pay Employees all

wages earned at least twice monthly;

m. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business expenses incurred by Employees;

n. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not providing employees with all required sick days and COVID-19 supplemental sick leave;

o. Whether Defendants violated Labor Code §§ 1174 and 1174.5;

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

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

C. Typicality

51. The claims of the named Plaintiff are typical of those of the other Employees. The Employee Class members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct and uniformly applied policies in violation of statutes, as well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for the off the clock work and meal and rest violations they were required to endure are typical of those of the other Class members.

D. Adequacy of Representation

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

E. Superiority of Class Action

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

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

1 the fair and efficient adjudication of this controversy, as joinder of all Class members is
2 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
3 members. Further, as the economic or other loss suffered by vast numbers of Class members may
4 be relatively small, the expense and burden of individual actions makes it difficult for the Class
5 members to individually redress the wrongs they have suffered. Moreover, in the event
6 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
7 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
8 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
9 to vindicate their rights for violations they endured which they would otherwise be foreclosed
10 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

11 55. 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 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
14 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would
15 set forth the subject and nature of the instant action. The Defendants' own business records can be
16 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
17 that any further notice is required additional media and/or mailings can be used.

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

26 57. Plaintiff and the Employees in the Class did not discover the fact that they were
27 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
28 any discussion about Plaintiff's and the Class members' waiver of their Constitutional rights of

1 trial by jury, to collectively organize and oppose unlawful pay practices under California law as
2 well as obtain injunctive relief preventing such practices from continuing. As a result, the
3 applicable statutes of limitation tolled until such time as Plaintiff and the Class members
4 discovered their claims.

5 **FIRST CAUSE OF ACTION**
6 **FAILURE TO PAY MINIMUM WAGES**
7 **(Against All Defendants)**

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

10 59. Defendants failed to pay Employees minimum wages for all hours worked.
11 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
12 would work hours and not receive wages, including as alleged above in connection with off the
13 clock work, including all the time required to remain on duty and under Defendants' control
14 during breaks and due to the work demands placed upon them by Defendants' management and
15 patients and by paying what should have been overtime hours as regular hours. Defendants'
16 uniformly applied policies required systematic off the clock work and underpayment of all wages
17 owed to Employees over a period of time, while benefiting Defendants. During the relevant time
18 period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class
19 members, including by requiring systematic off the clock work. To the extent any local wage
20 ordinances were also applicable to paying the employees an hourly rate above the minimum
21 wage rate, Defendants failed to comply with the local wage ordinances. Defendants' uniform
22 pattern of unlawful wage and hour practices manifested, without limitation, applicable to the
23 Class as a whole, as a result of implementing a uniform policy and practice that denied accurate
24 compensation to Plaintiff and the other members of the Class as to minimum wage pay.

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

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

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

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

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

19 64. In committing these violations of the California Labor Code, Defendants
20 inaccurately recorded, or required Plaintiff and the Class members to input times that did not
21 reflect their actual hours worked, or miscalculated hours or rates or otherwise underpaid the actual
22 time worked by Plaintiff and other members of the Class, including by requiring off the clock
23 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of
24 all earned wages, and other benefits in violation of the California Labor Code, the Industrial
25 Welfare Commission requirements and other applicable laws and regulations. As a result of these
26 violations, Defendants also failed to timely pay all wages earned in accordance with California
27 Labor Code § 1194.

28

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

5 66. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
6 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
7 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
8 pay each employee minimum wages.

9 67. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
10 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
11 interest thereon.

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

15 69. Plaintiff and the Class members are entitled to recover the unpaid minimum wages
16 (including double minimum wages) and local wage ordinance wages and liquidated damages in an
17 amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s
18 fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other
19 members of the Class further request recovery of all unpaid wages, according to proof, interest,
20 statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as
21 provided by the California Labor Code and/or other applicable statutes. To the extent minimum
22 wage compensation is determined to be owed to the Class members who have terminated their
23 employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202, and therefore
24 these individuals are also be entitled to waiting time penalties under California Labor Code § 203,
25 which penalties are sought herein on behalf of these Class members. Defendants’ failure to timely
26 pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code §
27 226 because they resulted in the issuance of inaccurate wage statements. Defendants’ conduct as
28 alleged herein was willful, intentional, and not in good faith. Further, Plaintiff and other Class

1 members are entitled to seek and recover statutory costs.

2 **SECOND CAUSE OF ACTION**

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

4 **(Against All Defendants)**

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

7 71. California Labor Code § 1194 provides that “any employee receiving less than the
8 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
9 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
10 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” The action
11 may be maintained directly against the employer in an employee’s name without first filing a
12 claim with the Division of Labor Standards and Enforcement.

13 72. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
14 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
15 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular
16 hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40)
17 hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any
18 one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12)
19 hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of
20 work in a workweek.

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

27 74. Defendants thus had a consistent policy of not paying Employees wages for all
28 hours worked, including hours at their required regular, overtime, and double-time rates.

1 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted
2 and/or modified certain employees' hours, including Plaintiff's, or required Plaintiff and the Class
3 members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and the
4 Class members all earned and owed straight time and overtime wages and other benefits, in
5 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
6 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
7 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt
8 employees to work through meal periods or remain under Defendants' control when they were
9 required to be clocked out or to otherwise work off the clock to complete their daily job duties and
10 respond to demands from customers and managers.

11 75. Therefore, Employees were not properly compensated, nor were they paid overtime
12 rates for hours worked in excess of eight hours in a given day, and/or forty hours in a given week.
13 Based on information and belief, Defendants did not make available to Employees a reasonable
14 protocol for correcting time records when Employees worked overtime hours or to fix incorrect
15 time entries or those that Defendants unlawfully under-recorded to the Employee's detriment.
16 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated
17 Class members to work through meal periods when they were required to be clocked out or to
18 otherwise work off the clock to complete their daily job duties.

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

24 77. Additionally, Labor Code § 558(a) provides "any employer or other person acting
25 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
26 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
27 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
28 pay period for which the employee was underpaid in addition to an amount sufficient to recover

1 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
2 underpaid employee for each pay period for which the employee was underpaid in addition to an
3 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
4 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in
5 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
6 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
7 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
8 Code § 558.

9 78. Defendants’ failure to pay compensation in a timely fashion also constituted a
10 violation of California Labor Code § 204, which requires that all wages shall be paid
11 semimonthly. From December 18, 2021, to the present, in direct violation of that provision of the
12 California Labor Code, Defendants have failed to pay all wages and overtime compensation
13 earned by Employees. Each such failure to make a timely payment of compensation to
14 Employees constitutes a separate violation of California Labor Code § 204.

15 79. Employees have been damaged by these violations of California Labor Code §§
16 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
17 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
18 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
19 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
20 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
21 any order or ruling of the commission.”

22 80. Consequently, pursuant to the California Labor Code, including Labor Code §§
23 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
24 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
25 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
26 their reasonable attorneys’ fees and costs, as well as the assessment of any statutory penalties
27 against Defendants, and each of them, and any additional sums as provided by the Labor Code
28 and/or other statutes.

1 **THIRD CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

12 83. Defendants failed to provide Employees with meal periods as required under the
13 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
14 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
15 provided them after Employees worked beyond the fifth hour of their shifts or Employees
16 otherwise had them shortened and interrupted by work demands and requirements to perform off
17 the clock work and remain under Defendants' control. Furthermore, upon information and belief,
18 on the occasions when Employees worked more than ten hours in a given shift, they did so
19 without receiving a second uninterrupted thirty-minute meal period as required by law.

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

24 85. Moreover, Defendants failed to compensate Employees for each meal period not
25 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
26 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
27 employee a meal period in accordance with this section, the employer shall pay the employee one
28 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal

1 period is not provided. As detailed above, when Defendants paid any meal period premiums, they
2 upon information and belief underpaid them by miscalculating the regular rate of compensation by
3 not including all forms of remuneration in it. Defendants thus failed to compensate the Employees
4 in the Class for each meal period not provided or inadequately provided, as required under Labor
5 Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order.

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

12 **FOURTH CAUSE OF ACTION**

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

14 **(Against All Defendants)**

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

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

20 89. Employees consistently worked consecutive four hour shifts and were generally
21 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
22 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
23 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
24 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
25 breaks of not less than ten minutes for each consecutive four hour shift. Defendants made no effort
26 to authorize and permit Plaintiff and the Class members to take lawful rest breaks. Employees
27 were often required to work or to otherwise remain under Defendants' control during rest periods,
28 including by responding to work requirements, and had breaks provided untimely as a result of the

1 above described off the clock work.

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

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

9 92. Defendants failed to authorize and permit Plaintiff and the Class members to take
10 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
11 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
12 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
13 12 and 20 of the applicable IWC Wage Orders. To the extent Defendants paid any rest break
14 premiums, they upon information and belief, underpaid them by miscalculating the regular rate of
15 compensation by not including all forms of remuneration in it. Defendants thus failed to
16 compensate the Employees in the Class for each rest period not provided or inadequately
17 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC
18 Wage Order.

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

24 **FIFTH CAUSE OF ACTION**

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

26 **(Against All Defendants)**

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

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

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

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

27 98. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
28 and intentional failure to provide them with the wage and hour statements as required by law and

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

15 99. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
16 are required “to pay each employee, on the established payday for the period involved, not less
17 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
18 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
19 or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members
20 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
21 4(B) and paragraph 20 of the applicable IWC Wage Orders.

22 100. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
23 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
24 Class suffered injuries, including among other things confusion over whether they received all
25 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
26 them to make mathematical computations to analyze whether the wages paid in fact compensated
27 them correctly for all hours worked.

28 101. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable

1 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of
2 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
3 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
4 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to
5 an award of costs and reasonable attorneys' fees.

6 **SIXTH CAUSE OF ACTION**
7 **VIOLATION OF LABOR CODE § 221**
8 **(Against All Defendants)**

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

11 103. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
12 receive from an employee any part of wages theretofore paid by said employer to said employee."
13 Pursuant to California Labor Code § 204, other applicable laws and regulations, and public policy,
14 an employer must timely pay its employees for all hours worked. Defendants failed to do so.

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

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

23 **SEVENTH CAUSE OF ACTION**
24 **VIOLATION OF LABOR CODE § 204**
25 **(Against All Defendants)**

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

28 107. Labor Code § 204 instructs that: "All wages, ...earned by any person in any

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

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

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

28 110. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to

1 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
2 to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
3 pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
4 applicable IWC Wage Orders.

5 **EIGHTH CAUSE OF ACTION**
6 **VIOLATION OF LABOR CODE § 203**
7 **(Against All Defendants)**

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

10 112. Plaintiff and numerous Class members are no longer employed by Defendants; they
11 either quit Defendants' employ or were fired therefrom.

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

14 114. The wages withheld from these Employees by Defendants remained due and owing
15 for more than thirty days from the date of separation from employment. Additionally, Defendants
16 failed to pay Plaintiff her final check at the time of her termination.

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

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

1 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
2 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
3 IWC Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and
4 Defendants are subject to a fine of not less than \$100 for causing Employees “to work for longer
5 hours than those fixed, or under conditions of labor prohibited by an order of the commission” or
6 if the employer pays “a wage less than the minimum fixed by an order of the commission” or
7 “violates...any provision of this chapter or any order or ruling of the commission.”

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

12 **NINTH CAUSE OF ACTION**

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

14 **(Against All Defendants)**

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

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

21 120. During the course of Plaintiff’s and Employees’ employment, Defendants
22 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as
23 required by California Labor Code § 1174 by failing to pay them proper wages, overtime, and
24 premium pay as discussed above and failing to document and pay for actual hours worked.

25 121. Defendants are also required by the California Labor Code § 1198 and the
26 applicable Wage Order to maintain a tracking system that accurately records the times during
27 which Employees work.

28 122. Defendants have maintained a common unlawful policy and practice of failing to

1 accurately record all hours worked and all meal period start and end times.

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

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

6 **TENTH CAUSE OF ACTION**

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

8 **(Against All Defendants)**

9 125. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
10 full herein.

11 126. Plaintiff is informed and believes and based thereon alleges that throughout the
12 period applicable, Defendants required Plaintiff and the Class members to pay for necessary work
13 related expenses they incurred. These included the cell phone-related expenses Plaintiff incurred
14 in responding to calls from management on her personal phone and mileage expenses Plaintiff
15 incurred in traveling for work purposes. Plaintiff and the Class members must be reimbursed for
16 these necessary business expenses under Labor Code § 2802 and Defendants systematically failed
17 to do so.

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

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

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

7 **ELEVENTH CAUSE OF ACTION**
8 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***
9 **(Against All Defendants)**

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

16 131. Plaintiff is a "person" within the meaning of Business & Professions Code
17 § 17204, has suffered injury, and therefore has standing to bring this cause of action for
18 injunctive relief, restitution, and other appropriate equitable relief.

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

28 133. Wage-and-hour laws express fundamental public policies. Paying employees their

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

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

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

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

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

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

28 139. Unless restrained by this Court Defendants will continue to engage in such

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

7 **TWELFTH CAUSE OF ACTION**

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

9 **(Against All Defendants)**

10 140. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

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

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

23 143. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
24 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5,
25 including the penalty provisions, without limitation, based, inter alia, on the following California
26 Labor Code sections: §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 246, 248.1, 248.2, 248.5, 351,
27 354, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802,
28 2810.5, 2698, and 2699, *et seq.*

1 144. More specifically, after complying with the notice procedures of Labor Code §
2 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
3 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
4 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
5 including as follows:

6 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
7 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
8 premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198,
9 and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all
10 civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2,
11 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to
12 Labor Code § 2699(g)(1);

13 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
14 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
15 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
16 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
17 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
18 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
19 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
20 pursuant to Labor Code § 2699(g)(1);

21 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
22 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
23 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
24 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
25 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
26 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
27 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
28 providing inaccurate wage statements and failing to maintain records as required under Labor

1 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
2 Code §226.3, which in addition to other penalties provided by law, subjects Defendants to “a
3 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
4 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
5 citation, ...”;

6 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
7 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
8 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§
9 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC
10 Wage Orders, and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1);

11 (e) Unlawful Deductions and Failure to Reimburse Business Expenses: For
12 Defendants’ unlawful deductions from wages and for Defendants’ failure to reimburse the
13 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
14 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
15 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
16 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys’ fees and costs
17 pursuant to Labor Code § 2699(g)(1);

18 (f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For
19 Defendants’ failure to provide Employees with all their required and earned sick days and all their
20 COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil
21 and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5,
22 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to
23 Labor Code § 2699(g)(1); and

24 (g) All Other Alleged Violations of the Labor Code and IWC Wage Orders: For Labor
25 Code §§ 2810.5, and any above addressed violation of the applicable provisions of the Labor Code
26 and IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5,
27 and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of
28 the applicable IWC Wage Orders, and for attorneys’ fees and costs pursuant to Labor Code §

1 2699(g)(1).

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

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

10 (b) If upon inspection or investigation the Labor Commissioner determines that
11 a person had paid or caused to be paid a wage for overtime work in violation of any
12 provision of this chapter, or any provision regulating hours and days of work in any
13 order of the Industrial Welfare Commission, the Labor Commissioner may issue a
citation. The procedures for issuing, contesting, and enforcing judgments for
14 citations or civil penalties issued by the Labor Commissioner for a violation of this
chapter shall be the same as those set out in Section 1197.1.

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

15 146. Plaintiff has exhausted her administrative remedies by submitting a certified letter
16 to the LWDA and Defendants on February 9, 2024 (LWDA-CM-1010243-24) addressing in detail
17 the specific provisions of the Labor Code Defendants have violated and addressing the facts and
18 legal theories to support the alleged violations and requested penalties. The LWDA has not
19 provided notice of its intent to investigate the alleged violations within 65 calendar days of the
20 postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the
21 violations addressed herein and in the PAGA Notice letter and the original Complaint.

22 **RELIEF REQUESTED**

23 WHEREFORE, Plaintiff prays for the following relief:

- 24 1. For an order certifying this action as a class action;
- 25 2. For compensatory damages in the amount of the unpaid minimum wages for work
26 performed by Employees and unpaid overtime compensation from at least December 18, 2021, as
27 may be proven;
- 28

3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least December 18, 2021, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from December 18, 2021, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least December 18, 2021, as may be proven;
7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
8. For restitution and/or damages and penalties for Defendants' failure to pay all wages due twice monthly under Labor Code § 204, as may be proven;
9. For restitution and/or damages for all amounts unlawfully withheld from the wages for all class members in violation of Labor Code § 221, as may be proven;
10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
11. For penalties pursuant to Labor Code § 1174.5, as may be proven;
12. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;
13. For damages and restitution for failure to reimburse all reasonable and necessary business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;
14. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;
15. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;
16. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;
17. For penalties under Labor Code § 558, as may be proven;

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

7
8 DATED: April 15, 2024

D.LAW, INC.

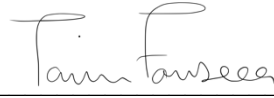
9
10 By Tania Fonseca
11 Emil Davtyan
12 David Yeremian
13 Alvin B. Lindsay
14 Tania Fonseca
15 Attorneys for Plaintiff Shashista Khan
16 And the putative class

DEMAND FOR JURY TRIAL

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

DATED: April 15, 2024

D.LAW, INC.

By 

Emil Davtyan
David Yeremian
Alvin B. Lindsay
Tania Fonseca
Attorneys for Plaintiff Shashista Khan
and the putative class

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

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

On April 15, 2024, I served the foregoing: **FIRST AMENDED CLASS ACTION COMPLAINT** on Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Marie Burke Kenney

marie.kenny@procopio.com

Nicholas Kawuka

Nicholas.kawuka@procopio.com

Ashley N. Fasano

Ashley.fasano@procopio.com

PROCOPIO, CORY, HARGREAVES & SAVITCH LLP

525 B Street, Ste. 2200

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Clerk of Department 21

dept21@alameda.courts.ca.gov

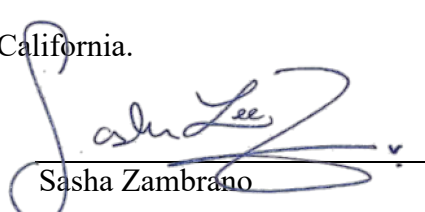
Alameda Superior Court

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

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

[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 April 15, 2024, at Glendale, California.


Sasha Zambrano

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA Branch Name: Rene C. Davidson Alameda County Courthouse Mailing Address: 1225 Fallon Street City, State and Zip Code: Oakland CA 94612	
SHORT TITLE: KHAN, AN INDIVIDUAL, ON BEHALF OF HERSELF AND OTHERS SIMILARLY SITUATED vs BAY AREA COMMUNITY HEALTH, A CALIFORNIA NONPROFIT CORPORATION NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 24CV063415

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of ALAMEDA. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Legal Connect ALA
Reference Number: 9603694_2024_04_16_00_27_00_129_2
Submission Number: 24AA00093443
Court Received Date: 04/15/2024
Court Received Time: 5:36 pm
Case Number: 24CV063415
Case Title: KHAN, AN INDIVIDUAL, ON BEHALF OF HERSELF AND OTHERS SIMILARLY SITUATED vs BAY AREA COMMUNITY HEALTH, A CALIFORNIA NONPROFIT CORPORATION
Location: Rene C. Davidson Alameda County Courthouse
Case Type: Civil Unlimited
Case Category: Other Employment Complaint Case
Jurisdictional Amount: Over \$35,000
Notice Generated Date: 04/16/2024
Notice Generated Time: 9:48 am

<u>Documents Electronically Filed/Received</u>	<u>Status</u>
Amended Complaint	Accepted
Notice of Posting of Jury Fees	Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

NOTICE OF CONFIRMATION OF FILING

Service Provider: Legal Connect ALA
Contact: Legal Connect
Phone: