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

NATASCHA MCNAUGHTAN, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

THE VONS COMPANIES, INC., a Michigan
Corporation; and DOES 1 through 100,
Defendants.

CASE NO.: CVRI2401565

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) **FAILURE TO REIMBURSE
NECESSARY BUSINESS EXPENSES
(LABOR CODE §§ 2802, 2804);**
- (6) **WAGE STATEMENT VIOLATIONS
(LABOR CODE §226 *et seq.*);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (8) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE §§ 2698, *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Natascha McNaughtan (“Plaintiff”), on behalf of herself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against The Vons Companies, Inc., a Michigan Corporation; and Does 1 through
4 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 action for recovery of unpaid wages, penalties, and unreimbursed expenses under California
8 Labor Code §§ 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198,
9 2802, 2804, 2698 *et seq.*, and California Business and Professions Code § 17200 *et. seq.* (“Unfair
10 Competition Law”), and Industrial Welfare Commission Wage Order 7 (“Wage Order 7”) in
11 addition to seeking declaratory relief, injunctive relief, and restitution. This Complaint is brought
12 pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
13 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
14 this Court’s jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as Defendants’ principal place of business is located in the
18 County of Riverside. Defendants own, maintain offices, transact business, have an agent or agents
19 within the County of Riverside, and/or otherwise are found within the County of Riverside, and
20 Defendants are within the jurisdiction of this Court for purposes of service of process.

21 **THE PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was, and currently is, a California resident, residing in the County of Riverside. During
24 the four years immediately preceding the filing of the Complaint in this action, and within the
25 statute of limitations periods applicable to each cause of action pled herein, Plaintiff was
26 employed by Defendants as a non-exempt employee in Riverside County. Plaintiff was, and is, a
27 victim of Defendants’ policies and/or practices complained of herein, lost money and/or property,
28 and has been deprived of the rights guaranteed to her by California Labor Code §§ 204, 226 *et*

1 *seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et seq.*,
2 Unfair Competition Law, and Wage Order 7 which sets employment standards for the mercantile
3 industry, that includes any industry, business, or establishment operated for the purpose of
4 purchasing, selling, or distributing goods or commodities at wholesale or retail.

5 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
6 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
7 continue to do) business within the County of Riverside by operating a chain of grocery stores,
8 and employed Plaintiff and other, similarly situated non-exempt employees within Riverside
9 County and the state of California and, therefore, were (and are) doing business in Riverside
10 County and the State of California.

11 5. Plaintiff does not know the true names or capacities, whether individual, partner,
12 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
13 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
14 further amend this Complaint when such true names and capacities are discovered. Plaintiff is
15 informed and believes, and based thereon alleges, that each of said fictitious defendants, whether
16 individual, partner, or corporate, were responsible in some manner for the acts and omissions
17 alleged herein, and proximately caused Plaintiff and the Classes (as defined herein) to be subject
18 to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

19 6. Plaintiff is informed and believes, and thereon alleges, that all Defendants,
20 however designated whether by real or fictitious name, were and are in some manner responsible
21 for the events, happenings, occurrence and instrumentalities upon and about which these claims
22 are made. At all relevant times mentioned herein, Defendants were and are the employers of
23 Plaintiff and all members of the Classes.

24 7. At all times herein mentioned, each of said Defendants participated in the doing
25 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
26 Defendants, and each of them, were the agents, servants, and employees of each and every one of
27 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
28 were acting within the course and scope of said agency and employment. Defendants, and each

1 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
2 omissions complained of herein.

3 8. At all times mentioned herein, Defendants, and each of them, were members of
4 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
5 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
6 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
7 members of the Classes.

8 **GENERAL FACTUAL ALLEGATIONS**

9 9. Defendants operate a chain of grocery stores throughout California. Defendants
10 have employed Plaintiff as a non-exempt employee since approximately December 2015. Plaintiff
11 is currently employed as a “Deli Manager.” Unless otherwise specified, all allegations herein
12 occurred during Plaintiff’s employment with Defendants.

13 10. Defendants failed to compensate Plaintiff and other non-exempt employees for all
14 hours actually worked, resulting in unpaid minimum and overtime wages. Specifically,
15 Defendants required Plaintiff and other non-exempt employees to don protective gear before
16 clocking-in to their shifts and doff protective gear after clocking-out of their shifts, but did not
17 compensate Plaintiff and other non-exempt employees for this time. For example, Defendants
18 required Plaintiff and other non-exempt employees to first don hair nets, hats, and aprons, which
19 were kept in the deli department and locker room away from the customer facing area of the store,
20 and then return to the customer facing area of the store to clock-in on an electronic timeclock.
21 Similarly, Plaintiff and other non-exempt employees were required to doff hair nets, hats, and
22 aprons after clocking-out of their shifts. As a result, Defendants required Plaintiff and other non-
23 exempt employees to perform work while off-the-clock, and Defendants failed to compensate
24 Plaintiff and other non-exempt employees for all minimum and overtime wages owed.

25 11. For a portion of the statutory period, Defendants also failed to pay Plaintiff and
26 other non-exempt employees all minimum and overtime wages owed due to Defendants’ policies
27 and practices that rounded and/or time-shaved Plaintiff’s and other non-exempt employees’ hours,
28 which resulted in Plaintiff and other non-exempt employees not being compensated for all hours

1 actually worked. As mentioned, Defendants required Plaintiff and other non-exempt employees
2 to clock-in and out through an electronic timekeeping system which recorded Plaintiff's and other
3 non-exempt employees' clock-in and clock-out times to the minute. Defendants, however,
4 rounded and/or time-shaved Plaintiff's and other non-exempt employees' hours to the nearest
5 quarter hour. Due to Defendants' timekeeping policies and practices that fail to compensate for
6 all hours worked, Plaintiff and other non-exempt employees were deprived of all required
7 minimum wages. *See Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638, 654 ("[I]f an
8 employer, as in this case, can capture and has captured the exact amount of time an employee has
9 worked during a shift, the employer must pay the employee for "all the time" worked."). Further,
10 on occasions when Plaintiff worked over eight hours in a day and/or forty hours in a workweek,
11 this process of time-shaving or rounding also deprived her of all overtime wages owed. As such,
12 Plaintiff and other non-exempt employees were not credited with all hours actually worked and
13 were not paid all minimum and overtime wages earned.

14 12. Further, Defendants also failed to pay Plaintiff and other non-exempt employees
15 all minimum and overtime wages owed due to Defendants' failure compensate Plaintiff and other
16 non-exempt employees for the time they spent on work-related phone calls and text messages
17 before and after their shifts. Specifically, Defendants' store directors and supervisors called and
18 sent text messages to Plaintiff and other non-exempt employees before and after their scheduled
19 shifts, with work-related issues. Despite requiring employees to perform this off the clock work,
20 Defendants failed to compensate Plaintiff and other non-exempt employees for this time.

21 13. Plaintiff routinely worked in excess of 8.0 hours per workday and/or 40.0 hours
22 per workweek but did not receive overtime compensation equal to one and one-half times their
23 regular rates of pay for working overtime hours. Specifically, Plaintiff and other non-exempt
24 employees earned non-discretionary shift differentials, incentive bonuses, and other forms of pay
25 that cannot be excluded from the regular rate of pay as a matter of law, including but not limited
26 to, payments denoted in their wage statements as "Second Shift Premium," "Sunday Premium"
27 and "Qtrly Operating Bonus" (hereinafter collectively referred to as "Incentive Pay"). As a result
28 of paying Plaintiff and other non-exempt employees Incentive Pay, Defendants failed to properly

1 calculate the regular rate of pay in pay periods when both Incentive Pay was earned and overtime
2 hours were worked, resulting in unpaid overtime wages.

3 14. Defendants failed to provide Plaintiff and other non-exempt employees with all
4 legally-compliant meal periods due to Defendants' unlawful meal period policies and practices
5 that failed to provide timely, uninterrupted, duty-free 30-minute meal periods before the end of
6 the fifth hour of work and second duty-free, 30-minute meal periods when they worked shifts in
7 excess of ten hours. Specifically, Defendants failed to provide a "net" of 30-minute meal periods
8 as required by law for the same reasons discussed below pertaining to rest periods. For meal
9 periods, Defendants required Plaintiff and other non-exempt employees to clock-in and out for
10 their purported meal periods at a timeclock that was approximately 200 feet away from the rest
11 area. Defendants failed to account for the time that Plaintiff and other non-exempt employees
12 were required to walk to reach the designated rest area after clocking-out and walk back from the
13 designated rest area before clocking-in, thereby shortening their purported meal periods to less
14 than 30 minutes "net" in the designated rest area away from the employee's workstation.
15 Moreover, Defendants failed to schedule and provide second meal periods, even though Plaintiff
16 and other non-exempt employees frequently worked shifts over ten hours. As a result, Plaintiff
17 and other non-exempt employees did not always receive an additional hour of premium pay at
18 their respective regular rates of pay for each workday in which a meal period violation occurred,
19 as required by Labor Code § 226.7.

20 15. Defendants maintained unlawful rest period policies and practices that failed to
21 authorize and permit Plaintiff and other non-exempt employees to take duty-free 10-minute rest
22 periods for every four hours worked, or major fraction thereof. Specifically, Defendants failed to
23 authorize and permit a third rest period when Plaintiff and other non-exempt employees worked
24 shifts over ten hours, despite that Plaintiff and other non-exempt employees regularly worked
25 shifts over ten hours. Moreover, Defendants failed to authorize and permit rest periods for a "net"
26 of 10 minutes for every four hours worked, or major fraction thereof. Under California law,
27 Defendants are required to authorize and permit a "net" rest period of 10-minutes that begins
28 when the employee reaches a rest area away from his or her workstation and must be uninterrupted

1 during the duration of the rest period. *See e.g.*, Division of Labor Standards Enforcement Manual
2 (“DLSE Manual”) §45.3.3; *Vaquero v. Stoneledge Furniture LLC*, (2017) 9 Cal.App.5th 98, 111-
3 112 (citing DLSE Manual § 45.3.3 for the proposition that “the rest period begins when the
4 employee reaches an area away from the workstation that is appropriate for rest”); *Augustus v.*
5 *ABM Security Services, Inc.*, (2016) 2 Cal.5th 257, 260 (“[D]uring required rest periods,
6 employers must relieve their employees of all duties and relinquish any control over how
7 employees spend their break time”). Specifically, as with meal periods, Defendants only
8 authorized and permitted Plaintiff and other non-exempt employees to take rest periods of exactly
9 10 minutes in length, beginning the moment they left their workstation and requiring Plaintiff and
10 other non-exempt employees to return to their workstations by the completion of the 10-minutes.
11 However, after leaving their workstations, Plaintiff and other non-exempt employees were
12 required to walk to and from the rest area, a distance of approximately 200 feet, thereby shortening
13 their purported rest periods to less than 10 minutes “net” in the designated rest area away from
14 the employee’s workstation. Further, on occasions when Plaintiff and other non-exempt
15 employees were not authorized and permitted to take all lawful rest periods to which they were
16 entitled, Defendants regularly failed to pay Plaintiff and other non-exempt employees an
17 additional hour of premium pay at their respective regular rates of pay for each workday in which
18 a rest period violation occurred, as required by Labor Code section 226.7.

19 16. Plaintiff and other non-exempt employees were not reimbursed for all necessary
20 business expenses. As mentioned, Defendants’ store directors and supervisors called and sent text
21 messages to Plaintiff and other non-exempt employees on their personal cellular phones.
22 Defendants, however, failed to pay any portion of its employees’ monthly cellular phone bill. *See*
23 *Cochran v. Schwan’s Home Service, Inc.*, (2014) 228 Cal.App.4th 1137. Moreover, Plaintiff and
24 other non-exempt employees were required to purchase slip resistant shoes multiple times per
25 year without reimbursement. Defendants also did not reimburse Plaintiff and other non-exempt
26 employees for mileage expenses incurred when Defendants required Plaintiff and other non-
27 exempt employees to travel to various store locations in order to pick up product from
28 Defendants’ other deli departments. As such, Defendants failed to reimburse Plaintiff and other

1 non-exempt employees for all necessary business expenses associated with using their personal
2 cellular phones, the purchase of necessary shoes, and mileage expenses, in violation of Labor
3 Code § 2802.

4 17. As a result of Defendants’ failure to pay all minimum wages, overtime wages, and
5 meal and rest period premium wages owed, Defendants maintained inaccurate payroll records,
6 and issued inaccurate wage statements to Plaintiff and other non-exempt employees.

7 18. Defendant contends that there is a class and representative action settlement in the
8 consolidated related action titled *Holly McCarthy, Leticia Rodarte, and Rachel Mendoza v. The*
9 *Vons Companies, Inc., et al.*, pending in the San Bernardino Superior Court, Case No.
10 CIVDS2021085 (“McCarthy Settlement”). The McCarthy Settlement Class is defined as “all
11 current and former non-exempt employees of The Vons Companies, Inc. in the State of California
12 during the period of February 13,2016 through April 30,2022 excluding employees who worked
13 at the distribution centers and plants, drivers, pharmacists and through August 7,2020 non-union
14 employees.” The McCarthy Settlement released claims for failure to pay overtime wages, failure
15 to pay minimum wages, failure to provide meal periods, failure to provide rest periods, failure to
16 pay for paid sick leave in full and at the correct rate of pay, failure to timely pay all wages during
17 and/or at the conclusion of employment, failure to provide accurate itemized wage statements,
18 and unfair competition. Additionally, the McCarthy Settlement released claims for civil penalties
19 under Labor Code Section 2698, *et seq.* (“PAGA”) from February 13, 2019 through April 30,
20 2022 (also excluding employees who worked at the distribution centers and plants, drivers,
21 pharmacist).

22 19. Defendant contends that there is also a class and representative action settlement
23 in the related action titled *Olga Fimbres v. The Vons Companies, Inc., et al.*, in the Riverside
24 County Superior Court, Case No. RIC 1904892 (“Fimbres Settlement”). The Fimbres Settlement
25 Wage Statement Class is defined as “all current and former non-exempt employees employed by
26 The Vons Companies in California who were issued a wage statement by Defendant that included
27 an FLSA adjustment line-item on their paystub on at least one occasion”. The Fimbres Settlement
28 Regular Rate Class is defined as “all current and former non-union employees employed by The

Vons Companies in California who earned compensation in addition to their base hourly wage that is included in the regular rate of pay and worked overtime hours during the same workweek on at least one occasion.” The Fimbres Settlement released claims for failure to provide accurate wage statements for the period from September 23, 2018 to August 7, 2020 as to the Participating Wage Statement Class Members and released claims for failure to pay overtime and failure to timely pay wages for the period from September 23, 2015 to August 7, 2020 as to the Participating Regular Rate Class Members.

CLASS ACTION ALLEGATIONS

20. **Class Definitions:** Plaintiff brings this action on behalf of herself and the following Classes pursuant to Code of Civil Procedure § 382:

- a. The Overtime Class consists of all of Defendants’ current and former non-exempt employees in California who worked more than 8.0 hours per day and/or 40.0 hours per workweek and (i) received Incentive Pay; and/or (ii) were subject to Defendants’ timekeeping policies and/or practices for non-exempt employees, during the four years immediately preceding the filing of this action through the present. This definition does not include claims by any employee who is a member of the McCarthy Settlement Class for the McCarthy Settlement period or who is a member of the Fimbres Settlement Regular Rate Class for the Fimbres Settlement period.
- b. The Minimum Wage Class consists of all Defendants’ current and former non-exempt employees in California who were subject to Defendants’ timekeeping policies and/or practices, during the four years immediately preceding the filing of this action through the present. This definition does not include claims by any employee who is a member of the McCarthy Settlement Class for the McCarthy Settlement period.
- c. The Meal Period Class consists of all Defendants’ current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours without a meal period of at least 30-minutes commencing before the end of the

fifth hour of work, during the four years immediately preceding the filing of this action through the present. This definition does not include claims by any employee who is a member of the McCarthy Settlement Class for the McCarthy Settlement period.

d. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of this action through the present. This definition does not include claims by any employee who is a member of the McCarthy Settlement Class for the McCarthy Settlement period.

e. The Reimbursement Class consists of all of Defendants' current and former non-exempt employees in California who were required to use a personal cellular phone, and/or purchased required shoes, and/or a personal vehicle, without reimbursement for work-related purposes during the four years immediately preceding the filing of this action through the present.

f. The Wage Statement Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class who received a wage statement during the one year immediately preceding the filing of this action through the present.

21. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes numbers greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

22. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

i. Whether Defendants lawfully paid premium wages for all overtime hours worked

to members of the Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198;

ii. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;

iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

iv. Whether Defendants authorized and permitted all lawful rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

v. Whether Defendants correctly paid meal and/or rest period premium payments for non-compliant meal and/or rest periods pursuant to Labor Code § 226.7;

vi. Whether Defendants failed to reimburse members of the Reimbursement Class for all necessary business expenses incurred pursuant to Labor Code §§ 2802 and 2804; and

vii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226.

23. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping policies/practices, meal and rest period policies/practices, and expense reimbursement policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

24. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff, like the members of the Classes, was employed by Defendants in California during the applicable statute of limitations period and was deprived of all minimum wages owed, overtime wages owed, was not provided all legally required meal and rest periods, was not reimbursed for

all necessary business expenses, and compliant wage statements.

25. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to represent the members of the Classes and Plaintiff fully and adequately. Plaintiff's attorneys have prosecuted and defended numerous wage and hour class actions in state and federal courts in the past, and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

26. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws, and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee was required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further,

1 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
2 individual prosecution considering all of the concomitant costs and expenses attending thereto.
3 As such, the Classes identified herein are maintainable under Code of Civil Procedure § 382.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY ALL OVERTIME WAGES**

6 **(AGAINST ALL DEFENDANTS)**

7 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 28. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
9 and 1198, which provide that non-exempt employees are entitled to all overtime wages and
10 compensation for hours worked, and provide a private right of action for the failure to pay all
11 overtime compensation for overtime work performed.

12 29. At all times relevant herein, Defendants were required to properly compensate
13 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
14 hours worked pursuant to Labor Code § 1194 and Wage Order 7. Wage Order 7, § 3 requires an
15 employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay”
16 for work in excess of eight hours per workday and/or in excess of forty hours of work in the
17 workweek. Wage Order 7, § 3 also requires an employer to pay an employee double the
18 employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work
19 in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants
20 caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the
21 Overtime Class at one and one-half times their regular rate of pay for such hours.

22 30. The foregoing policies and practices alleged herein are unlawful and create
23 entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for
24 the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil
25 penalties, attorneys’ fees, and costs of suit according to California Labor Code §§ 204, 210, 216,
26 510, 558, 1194, and 1198; and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

31. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

32. Wage Order 7, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

33. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to compensate Plaintiff and members of the Minimum Wage Class for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 7.

34. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

35. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages including, but not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 7.

36. The foregoing practices and policies are unlawful and create an entitlement to recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages owing, including interest thereon, liquidated damages, statutory and

1 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558,
2 1194, 1197, and 1198, Wage Order 7, and Code of Civil Procedure § 1021.5.

3 **THIRD CAUSE OF ACTION**

4 **MEAL PERIOD VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

6 37. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 failed in their affirmative obligation to provide all of their non-exempt employees in California,
9 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
10 in accordance with the mandates of the California Labor Code and Wage Order 7, § 11. Despite
11 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
12 of the Meal Period Class at their respective regular rates of pay, in accordance with California
13 Labor Code §§ 204, 210, 226.7, and 512.

14 39. As a result, Defendants are responsible for paying premium compensation for meal
15 period violations pursuant to Labor Code §§ 226.7, 512, 558, and 1198, and Wage Order 7,
16 including interest thereon, statutory penalties, civil penalties, and costs of suit.

17 **FOURTH CAUSE OF ACTION**

18 **REST PERIOD VIOLATIONS**

19 **(AGAINST ALL DEFENDANTS)**

20 40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21 41. Wage Order 7, § 12 and California Labor Code §§ 226.7, 516, 558, and 1198
22 establish the right of employees to be authorized and permitted to take a paid rest period of at
23 least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

24 42. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
25 of the Rest Period Class to take all required and legally compliant rest periods, and failed to pay
26 rest period premium wages when rest periods were not authorized and permitted.

27 43. The foregoing violations create an entitlement to recovery by Plaintiff and
28 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums

owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

44. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

45. At all relevant times herein, Defendants were subject to Labor Code § 2802, which states that “an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or obedience to the directions of the employer.”

46. At all relevant times herein, Defendants were subject to Labor Code § 2804, which states that “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

47. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, and Wage Order 7 § 9, Plaintiff and members of the Classes were damaged in sums, which will be shown according to proof.

48. Plaintiff and members of the class are entitled to attorney’s fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff is entitled to interest, which shall accrue from the date on which Plaintiff incurred the necessary expenditure.

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

49. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

50. Plaintiff is informed and believes, and based thereon alleges, that Defendants

1 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
2 and the Wage Statement Class with wage statements that complied with the requirements of Labor
3 Code § 226(a).

4 51. Defendants' failure to furnish Plaintiff with complete and accurate itemized wage
5 statements resulted in actual injury, as said failures led to, among other things, the non-payment
6 of all overtime and minimum wages owed and all meal and rest period premium wages owed, and
7 deprived Plaintiff of the information necessary to identify the discrepancies in Defendants'
8 reported data.

9 52. Defendants' failures create an entitlement to recovery by Plaintiff and members of
10 the Classes in a civil action for all damages and/or penalties pursuant to Labor Code § 226 *et seq.*,
11 including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit
12 according to California Labor Code § 226 *et seq.*

13 **SEVENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

15 **(AGAINST ALL DEFENDANTS)**

16 53. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

17 54. Defendants have engaged and continue to engage in unfair and/or unlawful
18 business practices in California in violation of California Business and Professions Code § 17200
19 *et seq.*, by failing to pay Plaintiff and the Classes all overtime and minimum wages owed; failing
20 to provide Plaintiff and the Classes lawful meal periods; failing to authorize and permit Plaintiff
21 and the Classes lawful rest periods; failing to reimburse Plaintiff and the Classes for all necessary
22 business expenses; and failing to furnish accurate and complete itemized wage statements in
23 violation of § 226 *et seq.*

24 55. Defendants' utilization of these unfair and/or unlawful business practices deprived
25 Plaintiff and continues to deprive members of the Classes of compensation to which they are
26 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
27 over Defendants' competitors who have been and/or are currently employing workers and
28 attempting to do so in honest compliance with applicable wage and hour laws.

1 56. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
2 herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of
3 monies, as necessary and according to proof, to restore all monies withheld, acquired and/or
4 converted by the Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

5 57. The acts complained of herein occurred within the last four years immediately
6 preceding the filing of the Complaint in this action.

7 58. Plaintiff was compelled to retain the services of counsel to file this court action to
8 protect Plaintiff's interests and those of the Class, to obtain restitution, to secure injunctive relief
9 on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting
10 the public interest. Plaintiff thereby incurred the financial burden of attorneys' fees and costs,
11 which Plaintiff is entitled to recover under Code of Civil Procedure § 1021.5.

12 **EIGHTH CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 **(AGAINST ALL DEFENDANTS)**

15 59. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 60. Defendants have committed several Labor Code violations against Plaintiff,
17 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
18 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved
19 employees, brings this representative action against Defendants to recover the civil penalties due
20 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
21 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
22 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
23 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
24 failure to pay each employee; (2) \$50.00 for each initial violation and \$100 for each subsequent
25 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
26 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
27 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
28 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for

each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees all earned overtime compensation in violation of §§ 204, 510, 558, 1194, and 1198;
- b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 204, 1182.12, 1194, 1194.2, and 1197;
- c. Failing to provide Plaintiff and other aggrieved employees all legally required meal periods, and failure to pay meal period premium wages to Plaintiff and other aggrieved employees at their regular rate of pay, in violation of Labor Code §§ 226.7, 512, and 558;
- d. Failing to authorize and permit Plaintiff and other aggrieved employees to take all lawful rest periods to which they are entitled, and failing to pay rest period premium wages to Plaintiff and other aggrieved employees at their regular rate of pay, in violation of Labor Code §§ 226.7, 516, and 558;
- e. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses incurred in violation of Labor Code §§ 2802 and 2804;
- f. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements, in violation of Labor Code § 226;
- g. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month, in violation of Labor Code § 204; and
- h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees, in violation of Labor Code §§ 558 and 1174.

61. On March 21, 2024, Plaintiff notified Defendants, via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties

under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified herein. Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

62. Based on the foregoing, Plaintiff seeks to represent herself and all other Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all of Defendants' current and former nonexempt employees who worked for Defendants in California at any time between March 21, 2023, and the present.

63. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which Plaintiff is entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action for payment of minimum wages, liquidated damages, and penalties owed according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;
6. Upon the Third Cause of Action for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action for compensatory, consequential, general and special

1 damages according to proof pursuant to Labor Code §§ 2802 and 2804;

2 9. Upon the Sixth Cause of Action for statutory wage statement penalties pursuant to
3 Labor Code § 226 *et seq.*;

4 10. Upon the Seventh Cause of Action for restitution to Plaintiff and members of the
5 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
6 practices declared by this Court to be in violation of California Business and Professions Code
7 § 17200 *et seq.*;

8 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
9 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
10 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure
11 to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation
12 pursuant to Labor Code § 210 for each failure to pay each employee; (2) \$50.00 for each initial
13 violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee
14 per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent employee
15 pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial
16 violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
17 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each
18 subsequent violation per employee per pay period for those violations of the Labor Code for which
19 no civil penalty is specifically provided, based on the violations of Labor Code sections cited in
20 Paragraph 59 (a)-(h) above;

21 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
22 § 218.6, and Civil Code §§ 3287 and 3289;

23 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
24 §§ 218.5, 226, 1194 *et seq.*, 2802(c), 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and
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1 14. For such other and further relief the Court may deem just and proper.

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3 Dated: June 20, 2024

Respectfully submitted,
HAINES LAW GROUP, APC
4 By: 
5 Fletcher W. Schmidt
6 Attorney for Plaintiff

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

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10 Dated: June 20, 2024

Respectfully submitted,
HAINES LAW GROUP, APC
11 By: 
12 Fletcher W. Schmidt
13 Attorney for Plaintiff
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