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on behalf of herself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ESHA LAKITA HICKSON, on behalf of
herself and others similarly situated,

Plaintiff,

vs.

LEVI'S ONLY STORES, INC., a Delaware
corporation; LEVI STRAUSS & CO., a
Delaware corporation; BODY YOGA, an
entity of unknown form; and DOES 1 through
50, inclusive

Defendants.

Case No. 24STCV06525

CLASS ACTION

Assigned for All Purposes To:

Hon. Carolyn Kuhl

Dept.: 12

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Failure to Pay Vacation Wages
6. Failure to Comply with Labor Code § 245 *et seq.* and 246;
7. Violation of Labor Code § 226(a);
8. Penalties Pursuant to Labor Code § 203; and
9. Violation of Business & Professions Code § 17200 *et seq.*
10. Penalties Pursuant to Labor Code § 2699, *et seq.*

DEMAND FOR JURY TRIAL

FILED
Superior Court of California
County of Los Angeles

05/20/2024

David W. Slayton, Executive Officer / Clerk of Court

By: R. Lozano Deputy

1 Plaintiff ESHA LAKITA HICKSON, (hereinafter “Plaintiff”) on behalf of herself and all
2 others similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of herself and all similarly situated current and
6 former employees within the State of California who, at any time four (4) years prior to the filing of
7 this lawsuit, are or were employed as non-exempt hourly employees by Defendants LEVI’S ONLY
8 STORES, INC., a Delaware corporation; LEVI STRAUSS & CO., a Delaware corporation; and
9 BODY YOGA, an entity of unknown form; and DOES 1 through 50 (all defendants being
10 collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each of them,
11 violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare
12 Commission (IWC), and California Business & Professions Code, and seeks redress.

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

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

THE PARTIES

A. The Plaintiff

4. Plaintiff ESHA LAKITA HICKSON has resided in California and during the time period relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within the State of California at Defendants' facilities and offices in California.

B. The Defendants

5. Defendant LEVI'S ONLY STORES, INC.; ("LOS") is a California corporation with its principle executive offices in San Francisco, California, and has been listed as the employer on the wage statements issued to Plaintiff during the relevant time period. LOS lists an address in San Francisco, California with the California Secretary of State and employs Plaintiff and the Class members in California, including at Defendants' offices and facilities in Los Angeles, California, and throughout California and conducts business throughout California.

6. Defendant LEVI STRAUSS & CO.; ("LSC") is a California corporation with its principle executive offices in San Francisco, California, and has been listed as the employer on the personnel documents issued to Plaintiff during the relevant time period. LSC lists an address in San Francisco, California with the California Secretary of State and employs Plaintiff and the Class members in California, including at Defendants' offices and facilities in Los Angeles, California, and throughout California and conducts business throughout California.

7. Defendant BODY YOGA; ("BY") is an entity of unknown form with its principle executive offices in Los Angeles, California and has been listed as the employer on Plaintiff's personnel file during the relevant time period. BY does not list a California address with the California Secretary of State, but upon information and belief, employs Plaintiff and the Class members in Los Angeles County, including at Defendants' offices and facilities in Los Angeles, California, and throughout California and conducts business throughout California.

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

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

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

13 **JURISDICTION AND VENUE**

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

22 **FACTUAL BACKGROUND**

23 11. The Employees who comprise the Class and Collective, including Plaintiff, are
24 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
25 Employees who work in nonexempt positions at the direction of Defendants in the State of
26 California. Plaintiff and the Class members were either not paid by Defendants for all hours worked
27 or were not paid at the appropriate minimum, regular and overtime rates. Specifically, Plaintiff and
28 Employees were required to work off the clock by performing “pre-shift” and “post-shift” duties

1 including bag checks each time after clocking out. Furthermore, the uncompensated time included
2 the time Employees worked off-the-clock during meal periods as a result of Defendants' high
3 demand. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class members all
4 wages due and owing, failed to provide meal and rest breaks, and failed to furnish accurate wage
5 statements, all in violation of various provisions of the California Labor Code and applicable Wage
6 Orders. Additionally, Defendants paid Plaintiffs and Employees nondiscretionary commissions,
7 incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants
8 failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay,
9 and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of
10 calculating the overtime wage rate. Therefore, during times when Plaintiffs and Employees worked
11 overtime and received nondiscretionary commissions, incentive pay, and/or nondiscretionary
12 bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

13 12. Moreover, Plaintiff contends that Defendants failed to pay Plaintiff and the Class
14 members all wages due and owing, by failing to provide meal and rest breaks, and failed to furnish
15 accurate wage statements, all in violation of various provisions of the California Labor Code and
16 applicable Wage Order provisions.

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

21 14. As a matter of uniform Company policy, Plaintiff and the Class members were
22 required to work during their meal and rest breaks which were not compensated by Defendants in
23 violation of the California Labor Code. Plaintiff and the Class members were also not paid regular
24 wages and overtime for the time they were required to comply with other requirements imposed
25 upon them, which they had to complete while working through their meal and rest breaks and
26 without compensation. As a result Plaintiff and the Class members worked shifts over eight (8)
27 hours in a day and over forty (40) hours in a work week, but they were not paid at the appropriate
28 overtime rate for all such hours, including by being required to perform work duties and tasks

1 without pay and while off-the-clock which caused overtime to begin accruing before it did in
2 Defendants' timekeeping and payroll systems. As a result, Plaintiff and the Class members worked
3 substantial overtime hours during their employment with Defendants for which they were not
4 compensated, in violation of the California Labor Code, applicable IWC Wage Orders.

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

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

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

25 18. Additionally, from at least four (4) years prior to the filing of this lawsuit and
26 continuing to the present, Defendants have regularly required Employees to work shifts in excess of
27 five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30)
28 minutes, and shifts in excess of ten (10) hours without providing them with second meal periods of

1 not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one hour of
2 wages at each Employee’s effective hourly rate of pay, for each meal period that Defendants failed
3 to provide or deficiently provided.

4 19. From at least four (4) years prior to the filing of this lawsuit and continuing to the
5 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
6 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
7 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
8 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
9 sick pay. Therefore, during times when Plaintiff and Employees worked overtime and received
10 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed
11 to pay all sick pay by paying a lower overtime rate than required.

12 20. From at least four (4) years prior to the filing of this lawsuit and continuing to the
13 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
14 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
15 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
16 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
17 vacation pay. Therefore, during times when Plaintiff and Employees worked overtime and received
18 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed
19 to pay all vacation pay by paying a lower overtime rate than required. Further, Defendant did not
20 pay Employees all of their vacation hours.

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

27 22. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
28 continuing to the present, Defendants have consistently failed to provide Employees with timely,

1 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

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

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

9 25. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
10 Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.4, 226.7, 227.3, 245, *et seq*, 510,
11 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 1670.5,
12 2698, and 2699, *et seq* applicable provisions of the IWC Wage Orders.

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

16 CLASS ALLEGATIONS

17 27. Plaintiff brings this class action on behalf of herself and all others similarly situated
18 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows:
19 “All individuals employed by Defendants, at any time within four (4) years of the filing of this
20 lawsuit, as non-exempt, hourly employees within the State of California.

21 28. Further, plaintiff seeks to represent the following Subclasses composed of and
22 defined as follows:

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

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

28 c. Subclass 3. Meal Period Subclass. All Class members who were subject to

Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

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

e. Subclass 5. Vacation Wages Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their vacation wages.

f. Subclass 6. Sick Pay Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

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

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

i. Subclass 9. UCL Subclass. All Class members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

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

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

A. Numerosity

31. The potential members of the class as defined are so numerous that joinder of all the member of the class is impracticable. While the precise number of class member has not been

1 determined at this time, Plaintiff is informed and believes that, during the time period relevant to
2 this lawsuit, Defendants employed more than 100 individuals within the State of California.

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

6 **B. Commonality**

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

- 9 a. Whether Defendants failed to pay Employees minimum wages;
- 10 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 11 c. Whether Defendants failed to pay Employees overtime as required under Labor Code
12 § 510;
- 13 d. Whether Defendants failed to pay Employees vacation wages as required under
14 Labor Code § 227.3;
- 15 e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC
16 Wage Orders, by failing to provide Employees with requisite meal periods or
17 premium pay in lieu thereof;
- 18 f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
19 Orders, by failing to provide Employees with requisite rest breaks or premium pay
20 in lieu thereof;
- 21 g. Whether Defendants failed to pay Employees sick pay as required under Labor Code
22 § 245;
- 23 h. Whether Defendants violated Labor Code § 226(a);
- 24 i. Whether Defendants failed to keep accurate time and wage records;
- 25 j. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
26 wages and compensation due and owing at the time of termination of employment;
- 27 k. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*;
- 28 l. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

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

3 **C. Typicality**

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

8 **D. Adequacy of Representation**

9 35. Plaintiff will fairly and adequately represent and protect the interest of Employees.
10 Counsel who represents Employees are experienced and competent in litigating employment class
11 actions.

12 **E. Superiority of Class Action**

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

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

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY MINIMUM WAGES**

23 **(Against All Defendants)**

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

26 39. Defendants failed to pay Employees minimum wages for all hours worked.
27 Defendants had a consistent policy of misstating Employees time records and failing to pay
28 Employees for all hours worked. Specifically, Plaintiff and Employees were required to work

1 during meal breaks and perform “pre-shift” and “post-shift” duties including having their bags
2 checked each shift. Moreover, Defendants did not pay Plaintiff and Employees at the applicable
3 minimum wage for all hours worked. Defendants’ uniform pattern of unlawful wage and hour
4 practices manifested, without limitation, applicable to the Class as a whole, as a result of
5 implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the
6 other members of the Class as to minimum wage pay.

7 40. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states:
8 The minimum wage for employees fixed by the commission is the
9 minimum wage to be paid to employees, and the payment of a less
10 wage than the minimum so fixed is unlawful.

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

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

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

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

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

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

///

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

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

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

47. By their conduct, as set forth herein, Defendants violated California Labor Code § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked including time off the clock when Plaintiff and Employees were required to work during meal breaks and perform “pre-shift” and “post-shift” duties including having their bags checked each shift. Employees regularly worked over 8 hours on a given day without receiving overtime compensation.

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

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

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

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

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

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

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

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

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

24 **THIRD CAUSE OF ACTION**

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

26 **(Against All Defendants)**

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

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

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

59. Moreover, Defendants failed to compensate Employees for each meal period not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. Defendants failed to compensate the Employees in the Class for each meal period not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order. Additionally, when Defendants did pay meal period premiums, they did so at the normal regular rate of pay without factoring in all forms or remuneration/compensation or by otherwise incorrectly calculating the regular rate.

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

FOURTH CAUSE OF ACTION

REST-BREAK LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

1 full herein.

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

5 63. Defendants failed to provide Employees with timely rest breaks of not less than ten
6 (10) minutes for each consecutive four (4) hour shift. Moreover, Defendants' policy of requiring the
7 Employees to keep their cell phones on throughout their rest breaks and to respond to any
8 emergencies or other situations that needed to be addressed prevented Employees from taking their
9 breaks.

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

16 65. Moreover, Defendants failed to compensate Employees for each rest period not
17 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
18 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in
19 accordance with this section, the employer shall pay the employee one hour of pay at the
20 employee's regular rate of compensation for each workday that the rest period is not provided.
21 Defendants failed to compensate the Employees in the Class for each rest period not provided or
22 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
23 Order. Additionally, when Defendants did pay rest period premiums, they did so at the normal
24 regular rate of pay without factoring in all forms or remuneration/compensation or by otherwise
25 incorrectly calculating the regular rate.

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

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

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

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

69. Defendants paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of remuneration in the regular rate of pay upon which vacation wages were calculated and paid. Further, Defendant did not pay Employees all of their vacation hours.

Therefore, pursuant to, Plaintiff and Employees seek to recover penalties pursuant to Labor Code § 227.3.

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

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

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

72. Defendants paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than calculating the amount of paid sick time due when sick time is used according to the requirements

1 set forth in California Labor Code § 246(1), Defendants paid sick leave to Employees at a lower
2 rate, in violation of the law.

3 73. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor Code
4 § 245 *et seq.* and §§ 245 *et seq.* and 246.

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

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

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

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

1 statements given to Employees by Defendants failed to accurately account for wages, overtime, and
2 premium pay for deficient meal periods and rest breaks, all of which Defendants knew or reasonably
3 should have known were owed to Employees, as alleged hereinabove.

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

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

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

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

21 **EIGHTH CAUSE OF ACTION**
22 **VIOLATION OF LABOR CODE § 203**
23 **(Against All Defendants)**

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

26 82. Numerous Employees are no longer employed by Defendants; they either quit
27 Defendants' employ or were fired therefrom.

28 83. Defendants failed to pay these Employees all wages due and certain at the time of

1 termination or within seventy-two (72) hours of resignation.

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

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

8 **NINTH CAUSE OF ACTION**

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

10 **(Against All Defendants)**

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

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

18 88. Plaintiff is a "person" within the meaning of Business & Professions Code
19 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
20 relief, restitution, and other appropriate equitable relief.

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

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

1 labor standards.

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

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

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

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

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

22 **TENTH CAUSE OF ACTION**

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

24 **(Against All Defendants)**

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

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28 ///

1 97. Plaintiff and Employees are aggrieved employees as defined under Labor Code
2 §2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
3 alleged violators, Defendants.

4 98. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'
5 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the
6 penalty provisions, without limitation, based on the following California Labor Code sections:
7 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.4, 226.7, 227.3, 245, *et seq.*, 510, 512, 558,
8 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 1670.5, 2698, and
9 2699, *et seq.*

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

12 100. Employees also seek any and all penalties and remedies set forth in Labor Code
13 § 558, which states:

14 (a) Any employer or other person acting on behalf of an employer
15 who violates, or causes to be violated, a section of this chapter or
16 any provision regulating hours and days of work in any order of the
17 Industrial Welfare Commission shall be subject to a civil penalty as
18 follows: (1) For any initial violation, fifty dollars (\$50) for each
19 underpaid employee for each pay period for which the employee was
20 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. (3) Wages recovered pursuant to this
section shall be paid to the affected employee.

21 (b) If upon inspection or investigation the Labor Commissioner
22 determines that a person had paid or caused to be paid a wage for
23 overtime work in violation of any provision of this chapter, or any
24 provision regulating hours and days of work of the Industrial
Welfare Commission, the Labor Commissioner may issue a citation.
The procedures for issuing, contesting, and enforcing judgments for
25 citations of civil penalties issued by the Labor Commissioner for
violation of this chapter shall be the same as those set out in Section
26 1197.1.

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

101. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on. Plaintiff has exhausted his administrative remedy by sending a certified letter to the LWDA and Defendants postmarked on March 14, 2024. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the postmark date of the letters

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, 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 four (4) years prior to the filing of this action, 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 four (4) years prior to the filing of this action, as may be proven;
7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
8. For penalties pursuant to Labor Code § 203 for all Employees who quit or were

1 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

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

3 10. For penalties pursuant to Labor Code § 226.3, as may be proven;

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

5 12. For restitution for unfair competition pursuant to Business & Professions Code
6 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

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

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

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

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

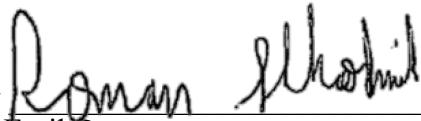
13 17. For an award providing for the payment of the costs of this suit;

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

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

16
17 DATED: May 20, 2024

D.LAW, INC.

18
19 By 
20 Emil Davtyan
21 David Yeremian
22 Roman Shkodnik
23 Amanda Fazio
24 Attorneys for Plaintiff
25 ESHA LAKITA HICKSON
26 and the putative class
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DATED: May 20 2024

By 
Emil Davtyan
David Yeremian
Roman Shkodnik
Amanda Fazio
Attorneys for Plaintiff
ESHA LAKITA HICKSON
and the putative class

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

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Los Angeles, CA 90067-3021

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

Executed on May 21, 2024, at Glendale, California.

Natalia Bermudes
Natalia Bermudes