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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

JACKIE NGUYEN-SHORT, an individual
on behalf of herself and all others similarly
situated,

Plaintiff,

vs.

AS RESTAURANT CORPORATION, a
California corporation doing business as
PHO MAI; D & T RESTAURANT LLC, a
California limited liability company; DON
VAN HUYNH, an individual, and DOES 1
through 50, inclusive,

Defendants.

Case No.: CIVSB2408630

CLASS ACTION

Assigned for All Purposes To:

Hon. Carlos Cabrera
Dept.: S24

**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. Violation of Labor Code § 226(a);
6. Violation of Labor Code § 203;
7. Violation of Labor Code § 204;
8. Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5;
9. Violation of Labor Code § 246;
10. Failure to Reimburse Necessary Business Expenses § 2802;
11. Violation of Business & Professions Code § 17200 *et seq.*; and
12. Penalties under PAGA; Labor Code § 2698

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Plaintiff JACKIE NGUYEN-SHORT (“Plaintiff”) brings this action on behalf of
3 herself and the Class Members who are defined as “all current and former employees within the
4 State of California who, at any time from four (4) years prior to the filing of this lawsuit, are or
5 were employed as non-exempt hourly employees by Defendants AS RESTAURANT
6 CORPORATION, a California corporation doing business as PHO MAI; D & T RESTAURANT,
7 LLC; a California limited liability company; VAN HUYNH, an individual; and DOES 1 through
8 50” (all defendants being collectively referred to herein as “Defendants”).

9 2. Plaintiff alleges that Defendants, and each of them, violated various provisions of
10 the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and the
11 California Business & Professions Code, and seeks redress for these violations.

12 3. Upon information and belief, Plaintiff was employed by Defendants and (1) shared
13 similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3)
14 endured similar violations at the hands of Defendants as the other Class Members who served in
15 similar and related positions.

16 **THE PARTIES**

17 **A. The Plaintiff**

18 4. Plaintiff JACKIE NGUYEN-SHORT resides in California, during the time period
19 relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee within
20 the State of California.

21 **B. The Defendants**

22 5. Defendant AS RESTAURANT CORPORATION, doing business as PHO MAI is a
23 California corporation with its principal offices in Chino Hills, California and is registered with
24 the California Secretary of State. Defendant AS RESTAURANT CORPORATION, doing
25 business as PHO MAI has been the employer listed on the wage statements and employment
26 records issued to Plaintiff during the relevant time period that Plaintiff was employed with
27 Defendants. AS RESTAURANT CORPORATION, doing business as PHO MAI employs
28 Plaintiff and the Class Members in California, including at Defendants’ offices and facilities in

1 Chino Hills, California, and throughout California, and conducts business throughout California.
2 Upon information and belief, Defendant AS RESTAURANT CORPORATION acted as an
3 integrated enterprise with the other Defendants.

4 6. Defendant D & T RESTAURANT LLC is a California limited liability company
5 and is registered with the California Secretary of State. Upon information and belief, Defendant D
6 & T RESTAURANT LLC acted as an integrated enterprise with the other Defendants.

7 7. Plaintiff is informed and believes Defendant DON VAN HUYNH is a natural
8 person who employed Plaintiff and the Class Members.

9 8. At all times herein mentioned, Defendants AS RESTAURANT CORPORATION;
10 and D & T RESTAURANT LLC are referred to as (the "Companies").

11 9. Plaintiff is informed and believes and thereon alleges that the Companies and
12 Owner acted in all respects pertinent to this action as an integrated enterprise. Upon information
13 and belief, the Companies share common management, an interrelationship between operations, a
14 centralized control of labor relations and common ownership or financial control.

15 10. Plaintiff is informed and believes and based thereon alleges that DON VAN
16 HUYNH is a natural person who is the owner, director, officer, or managing agent of the
17 Companies, who violated, or caused to be violated, the Labor Code Sections alleged herein, and is
18 liable under Labor Code §558.1.

19 11. Plaintiff is informed and believes and thereon alleges that Defendant DON VAN
20 HUYNH, at all times relevant to this complaint, was the alter ego of the Companies. Plaintiff
21 alleges, upon information and belief, that Defendant DON VAN HUYNH, either individually or
22 with members of his family, owned, controlled, and dominated the Companies; that he
23 commingled the funds of the Companies with his personal assets, as well as the assets of other
24 entities owned in whole or in part by them; that the failed to segregate the funds of these separate
25 entities; that they wrongly diverted corporate funds or assets to non-corporate uses; that he treated
26 the assets of the Companies as his own; that he held himself out as being personally liable for the
27 debts of the Companies; that he failed to maintain minutes or adequate corporate records and
28 confused the records of various entities; that he used the same office or business location and

1 employed the same employees and attorneys for all entities; that he failed to adequately capitalize
2 the Companies; that he used the Companies as a mere shell, instrumentality, or conduit for the
3 business of an individual or individuals, namely, himself and his family; that he disregarded legal
4 formalities and failed to maintain arm's-length relationships among related entities; that he used
5 the corporate entity to procure labor, services, and merchandise for himself or other entities; that
6 he diverted assets from the Companies to the detriment of creditors, or manipulated assets and
7 liabilities between entities so as to concentrate the assets in one and the liabilities in another; that
8 he used the Companies as subterfuges of illegal transactions; and that he formed and used the
9 Companies to transfer to it his existing liabilities. Plaintiff further avers that recognizing the acts
10 and conduct described in this complaint as those only of the Companies would promote an
11 inequitable and unjust result, namely, the deprivation of Plaintiff's fundamental rights under the
12 Labor Code, as described herein.

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

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

1 employed Class Members.

2 14. Whenever and wherever reference is made in this Complaint to any act by a
3 defendant or defendants, such allegations and references shall also be deemed to mean the acts and
4 failures to act of each defendant acting individually, jointly, and severally.

5 15. Whenever and wherever reference is made to individuals who are not named as a
6 Defendant in this Complaint but were agents, servants, employees and/or supervisors of
7 Defendants, such individuals at all relevant times acted on behalf of Defendants within the scope
8 of their employment.

9 **JURISDICTION AND VENUE**

10 16. This Court has jurisdiction over this Action pursuant to California Code of Civil
11 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
12 as a Class Action on behalf of similarly situated Class Members of Defendants pursuant to
13 California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial
14 district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief,
15 the obligations and liabilities giving rise to this lawsuit occurred in part in San Bernardino County.
16 Defendants maintain and operate facilities in San Bernardino County and employs Plaintiff and
17 other Class Members in San Bernardino County, while doing business throughout California.

18 **FACTUAL BACKGROUND**

19 17. Class Members consistently worked at Defendants behest without being paid all
20 wages due. Class Members were either not paid by Defendants for all hours worked or were not
21 paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that
22 Defendants failed to pay Class Members all wages due and owing, including by requiring off the
23 clock work, unlawfully rounding to their detriment, failing to incorporate non-discretionary cash
24 awards and/or bonuses into the regular rate of pay used to calculate and pay for overtime pay, sick
25 pay, and meal and rest break premiums, failing to provide meal and rest breaks, failing to furnish
26 accurate wage statements, failing to timely pay wages including final wages, failing to provide
27 sick pay, failing to maintain accurate records, and failing to reimburse necessary business
28 expenses all in violation of various provisions of the California Labor Code and applicable Wage

1 Orders.

2 18. During the course of Class Members' employment with Defendants, they were not
3 paid all wages they were owed, including for all work performed resulting in off the clock work.
4 Defendants required Class Members to perform pre-shift and post-shift off the clock work. For
5 instance, Defendants instructed Class Members to clock out and continue working after the end of
6 their scheduled shifts until all the customers left. Furthermore, Defendants frequently contacted
7 Class Members on their personal cell phones with work demands outside of scheduled work hours,
8 and Class Members were not compensated for this time. Defendants also required Class Members
9 to work through portions of their scheduled meal periods, and Class Members were not paid for
10 this time.

11 19. Defendants also failed to pay Class Members all wages due and owing because
12 Defendants failed to incorporate non-discretionary, performance-based cash awards and/or
13 bonuses into the regular rate of pay. Contrary to the requirements of the Labor Code and IWC
14 Wage Orders under California law, Defendants did not incorporate these non-discretionary cash
15 awards and/or bonuses paid to the Class Members into the regular rate of pay Defendants used to
16 calculate and pay for overtime pay, sick pay, and meal and rest break premiums.

17 20. Moreover, Defendants had a consistent policy and practice of unlawfully rounding
18 hours worked to the detriment of the Class Members. Rather than paying Class Members for all
19 hours and minutes they actually worked, Defendants followed a uniform policy and practice of
20 rounding all time entries to the nearest quarter-hour or half-hour (i.e. to the nearest 15-minute or
21 30-minute time increment), and generally did so to the detriment of the Class Members, and
22 Plaintiff contend this policy is not neutral and resulted, over time, to the detriment of the Class
23 Members by systematically under-compensating them. Rather than reflecting the actual hours
24 worked by Class Members, the time entries were rounded and reduced to reflect the scheduled
25 work time rather than the actual hours worked. These unlawfully rounded time entries were
26 inputted into Defendants' payroll system from which wage statements and payroll checks were
27 created.

28 21. By implementing policies, programs, practices, procedures and protocols which

1 resulted in off the clock work, unlawful rounding, and the failure to incorporate non-discretionary
2 cash awards and/or bonuses into the regular rate of pay, Defendants' willful actions resulted in the
3 systematic underpayment of wages to Class Members, including underpayment of overtime pay to
4 Class Members over the relevant time period. For example, the above described off the clock work
5 addressed above caused Plaintiff to begin receiving overtime pay later than they should have.

6 22. As a result of the above described requirements to work off the clock, unlawful
7 rounding by Defendants, the failure to incorporate non-discretionary cash awards and/or bonuses
8 into the regular rate of pay, and the other wage violations they endured at Defendants' hands,
9 Class Members were not properly paid all wages earned and all wages owed to them by
10 Defendants, including when working more than eight (8) hours in any given day and/or more than
11 forty (40) hours in any given week.

12 23. As a result of Defendants' unlawful policies and practices, Class Members incurred
13 overtime hours worked for which they were not adequately and completely compensated, in
14 addition to the hours they were required to work off the clock. To the extent applicable,
15 Defendants also failed to pay Class Members at an overtime rate of 1.5 times the regular rate for
16 the first eight hours of the seventh consecutive work day in a week and overtime payments at the
17 rate of 2 times the regular rate for hours worked over eight (8) on the seventh consecutive work
18 day, as required under the Labor Code and applicable IWC Wage Orders.

19 24. Therefore, 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 Class
21 Members for all hours worked, and failing to pay minimum wages for all time worked, as required
22 by California law. Defendants thus failed to pay Class Members at least minimum wages for all
23 the time they worked for Defendants in violation of the Labor Code and applicable IWC Wage
24 Orders as the actual times when Class Members were under the control and direction of
25 Defendants was under reported in the hours reflected on the timekeeping records. Furthermore,
26 Defendants' willful actions resulted in the systematic underpayment of wages to Class Members,
27 including underpayment of overtime pay to Class Members over a period of time.

28 25. Therefore, from at least four (4) years prior to the filing of this lawsuit and

1 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
2 Members for all hours worked. Also, from at least four (4) years prior to the filing of this lawsuit
3 and continuing to the present, Defendants also had a consistent policy or practice of failing to pay
4 Class Members their true and correct overtime compensation at premium overtime rates for all
5 hours worked in excess of eight (8) hours a day and/or forty (40) hours a week, and double-time
6 rates for all hours worked in excess of twelve (12) hours a day, in violation of Labor Code § 510
7 and the corresponding sections of IWC Wage Orders.

8 26. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
9 meal periods and all the legally required paid, off-duty rest periods to Class Members, as required
10 by the applicable Wage Order and Labor Code. Class Members were required to perform work as
11 ordered by Defendants for more than five (5) hours during a shift but were often required to do so
12 without receiving a lawful and timely meal break. In addition to untimely meal periods,
13 Defendants also required Class Members to respond to work demands. Defendants placed their
14 needs over Class Members lawful meal and rest breaks and this resulted in Class Members often
15 having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened
16 ones, because the demands of the job would not avail them the opportunity to take a lawfully
17 uninterrupted and off duty meal and/or rest break. Additionally, to the extent Class Members were
18 permitted to take meal periods, they were prohibited from leaving the premises.

19 27. On the occasions when Class Members worked over 10 hours in a shift, Defendants
20 also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a
21 result, Defendants' failure to provide Class Members with all legally required off-duty, unpaid
22 meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by
23 Defendants' business records, or lack thereof. Defendants also failed to pay Class Members
24 "premium pay," i.e. one hour of wages at each Class Member's effective hourly rate of pay, for
25 each meal period or rest break that Defendants failed to provide or deficiently provided.

26 28. Therefore, for at least four years prior to the filing of this action and through to the
27 present, Defendants have regularly required Class Members to work shifts in excess of five (5)
28 hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes,

1 and shifts in excess of (10) hours without providing them with second meal periods of not less
2 than thirty minutes; nor did Defendants pay Class Members “premium pay,” i.e. one hour of
3 wages at each Class Member’s effective hourly rate of pay, for each meal period that Defendants
4 failed to provide or deficiently provided.

5 29. Meal period violations thus occurred in one or more of the following manners:

- 6 (a) Class Members were not provided full thirty-minute duty free meal periods
7 for work days in excess of five (5) hours and were not compensated one (1)
8 hour’s wages in lieu thereof, all in violation of, among others, Labor Code
9 §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage
10 Order(s);
- 11 (b) Class Members were not provided second full thirty-minute duty free meal
12 periods for work days in excess of ten (10) hours;
- 13 (c) Class Members were required to work through at least part of their daily
14 meal period(s);
- 15 (d) Meal periods were provided after five (5) hours of continuous work during
16 a shift; and
- 17 (e) Class Members were restricted in their ability to take a full thirty-minute
18 meal period.

19 30. Class Members were also not authorized and permitted to take lawful rest periods,
20 were systematically required by Defendants to work through or during breaks and were not
21 provided with one (1) hour’s wages in lieu thereof. Class Members were restricted in their ability
22 to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest
23 periods. Therefore, from at least four years prior to the filing of this lawsuit and continuing to the
24 present, Defendants have consistently failed to provide Class Members with paid rest breaks of not
25 less than ten minutes for every work period of four or more consecutive hours; or major fraction
26 thereof, nor did Defendant pay Class Members premium pay for each day on which requisite rest
27 breaks were not provided or were deficiently provided.

28 31. Rest period violations therefore arose in one or more of the following manners:

- 1 (a) Class Members were required to work without being provided a minimum
2 ten (10) minute rest period for every four (4) hours or major fraction
3 thereof worked and were not compensated one (1) hour of pay at their
4 regular rate of compensation for each workday that a rest period was not
5 provided;
- 6 (b) Class Members were not authorized and permitted to take timely rest
7 periods for every four hours worked, or major fraction thereof; and
- 8 (c) Class Members were required to remain on-duty during rest periods or
9 otherwise had their rest periods interrupted by work demands.

10 32. Defendants also consistently failed to issue accurate itemized wage statements as
11 required by Labor Code § 226(a). Specifically, the wage statements given to Class Members failed
12 to accurately account for unpaid wages and overtime because Defendants had unlawfully rounded
13 time entries to the detriment of the Class Members and their actual hours worked were under-
14 reported due to off the clock work. Moreover, the wage statements given to Class Members failed
15 to incorporate non-discretionary cash awards and/or bonuses into the regular rate of pay used to
16 calculate and pay overtime compensation. Additionally, the wage statements given to Class
17 Members failed to accurately account for premium pay for deficiently provided meal periods and
18 rest breaks. Moreover, the wage statements given to Class Members failed to account for tips and
19 cash payments they received.

20 33. From at least four (4) years prior to filing this lawsuit and continuing to the present,
21 Defendants have thus also had a consistent policy of failing to pay all wages owed to Class
22 Members at the time of their termination of within seventy-two (72) hours of their resignation, as
23 required by California wage-and-hour laws. Specifically, Plaintiff and Class Members were not
24 paid all regular and overtime wages because Defendants failed to pay for all hours worked,
25 required off the clock work, unlawfully rounded time entries to the detriment of Class Members,
26 and failed to incorporate non-discretionary cash awards and/or bonuses into the regular rate of pay
27 used to calculate and pay for overtime pay, sick pay, and meal and rest break premiums.
28 Additionally, Defendants failed to pay premium wages owed for unprovided meal periods and rest

1 periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the
2 required time was willful within the meaning of Labor Code § 203.

3 34. Additionally, from at least four (4) years prior to the filing of this lawsuit and
4 continuing to the present, Defendants have regularly required Class Members to incur business
5 expenses in the course of performing their required job duties for Defendants including for cell
6 phone expenses and mileage. Upon information and belief, Class Members incurred similar costs.
7 These expenses incurred by Class Members were necessary and required of them in performing
8 their assigned job duties, but Defendants failed to reimburse Class Members for all such necessary
9 expenditures, thus entitling them to reimbursement according to proof as required under Labor
10 Code § 2802 and the applicable provisions of the IWC Wage Orders.

11 35. Defendants also violated California Labor Code § 351 when Defendants and its
12 agents collected, took, and received gratuity that was paid, given to, or left for an Aggrieved
13 Employee by a patron. To wit, Defendant's agents took a share of the tips from the bar even when
14 they did minimal work there.

15 36. Defendants also failed to provide suitable seating to Class Members. The
16 operations at Defendant's facilities allowed for the presence and use of a stool or seat by Class
17 Members during the performance of their work duties. The nature of the effected job positions can
18 reasonably be accomplished while using a seat or stool. However, Defendant failed to provide
19 Class Members suitable seating when the nature of these employees' work reasonably permitted
20 sitting.

21 37. In light of the foregoing, Plaintiff and Class Members bring this action pursuant to,
22 *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 248, 510, 512, 558,
23 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698 *et seq.*, 2802 and
24 California Code of Regulations, Title 8, section 11000 *et seq.*

25 38. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
26 and the Class Members seek injunctive relief, restitution, and disgorgement of all benefits
27 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or
28 fraudulent practices alleged in this Complaint.

CLASS ALLEGATIONS

39. Plaintiff seeks to represent the Subclasses composed of and defined as follows:

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

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

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

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

f. Subclass 6. 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.

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

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

i. Subclass 9. Sick Days Subclass. All Class Members who, within the applicable

1 limitations period, were not paid for their sick days.

2 j. Subclass 10. Expense Reimbursement Subclass. All Class Members who incurred
3 necessary and reasonable expenses in connection with performing their job duties for Defendant
4 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

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

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

12 41. Defendants, as a matter of company policy, practice and procedure, and in violation
13 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,
14 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
15 in a practice whereby Defendants failed to correctly calculate compensation for the time worked
16 by Class Members, even though Defendants enjoyed the benefit of this work, required Class
17 Members to perform this work and permitted or suffered to permit this work. Defendants have
18 uniformly denied these Class Members wages to which these employees are entitled and failed to
19 provide meal periods or authorize and permit rest periods, in order to unfairly cheat the
20 competition and unlawfully profit.

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

24 **A. Numerosity**

25 43. The potential members of the class as defined are so numerous that joinder of all
26 the member of the class is impracticable. While the precise number of class member has not been
27 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
28 time period relevant to this lawsuit, hundreds of employees who satisfy the Class definition within

1 the State of California.

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

5 **B. Commonality**

6 45. There are questions of law and fact common to the Class that predominates over
7 any questions affecting only individual Class Members. These common questions of law and fact
8 include:

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

overtime;

k. Whether Defendants violated Labor Code § 204 by failing to timely pay wages;

l. Whether Defendants failed to pay Class Members for sick days;

m. Whether Defendants violated Labor Code § 2802 by failing to reimburse all necessary business expenses Defendants required them to incur in performing their job duties;

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

o. Whether Class Members are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

///

C. Typicality

46. The claims of the named plaintiff is typical of those of Class Members. The Class Members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

D. Adequacy of Representation

47. Plaintiff will fairly and adequately represent and protect the interest of the Class Members. Counsel who represents Class Members are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

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

49. As to the issues raised in this case, a class action is superior to all other methods for the fair and efficient adjudication of this controversy, as joinder of all Class Members is

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

11 50. Class action treatment will allow those persons similarly situated to litigate their
12 claims in the manner that is most efficient and economical for the parties and the judicial system.
13 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
14 Plaintiff contemplates the eventual issuance of notice to the proposed Class Members that would
15 set forth the subject and nature of the instant action. The Defendants' own business records can be
16 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
17 that any further notice is required additional media and/or mailings can be used.

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

26 52. Class Members did not discover the fact that they were entitled to all pay under the
27 Labor Code until shortly before the filing of this lawsuit nor was there ever any discussion about
28 Plaintiff's and the Class' waiver of their Constitutional rights of trial by jury, right to collectively

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

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

7 53. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
8 full herein.

9 54. Defendants failed to pay Class Members minimum wages for all hours worked.
10 Defendants had a consistent policy of misstating Class Members' time records and failing to pay
11 Class Members for all hours worked. Class Members would work hours and not receive wages,
12 including as alleged above in connection with off the clock work and unlawful rounding of hours.
13 Additionally, Defendants failed to incorporate non-discretionary cash awards and/or bonuses into
14 the regular rate of pay used to calculate and pay overtime. Defendants, and each of them, have
15 intentionally and improperly changed, adjusted and/or modified the hours of Class Members,
16 which resulted in off the clock work and underpayment of all wages owed to Class Members over
17 a period of time, while benefiting Defendants. During the relevant time period, Defendants thus
18 regularly failed to pay minimum wages to Class Members, to their detriment. Additionally,
19 Defendants had a consistent policy of failing to pay Class Members for hours worked during
20 alleged meal and rest periods for which Class Members were consistently denied, as also
21 addressed herein. Defendants' uniform pattern of unlawful wage and hour practices manifested,
22 without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy
23 and practice that denied accurate compensation to Class Members as to minimum wage pay.

24 55. In California, employees must be paid at least the then applicable state minimum
25 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
26 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
27 timely pay its employees for all hours worked. Defendants failed to do so.

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

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

3 57. The applicable minimum wages fixed by the commission for work during the
4 relevant period is found in Paragraph 4(A)-4(D) of the IWC Wage Orders.

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

11 59. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
12 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
13 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
14 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
15 all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may
16 be used as a credit against a minimum wage obligation.

17 60. In committing these violations of the California Labor Code, Defendants
18 inaccurately recorded, or required Class Members to input times that did not reflect their actual
19 hours worked, or calculated the correct time worked and consequently underpaid the actual time
20 worked by Class Members. Defendants acted in an illegal attempt to avoid the payment of all
21 earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
22 Commission requirements and other applicable laws and regulations. As a result of these
23 violations, Defendant also failed to timely pay all wages earned in accordance with California
24 Labor Code § 1194.

25 61. California Labor Code § 1194.2 also provides for the following remedies: “In any
26 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
27 minimum wages fixed by an 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.”

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

63. Pursuant to California Labor Code § 1194.2, Class Members are further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and interest thereon.

64. 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 Class Members.

65. Wherefore, Class Members 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). Plaintiff and the other members of the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code, including § 558, and/or other applicable statutes.

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

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

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

68. By their conduct, as set forth herein, Defendants violated California Labor Code §

1 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Class
2 Members: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8)
3 hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours
4 worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for
5 hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of
6 eight (8) hours on any seventh day of work in a workweek.

7 69. Defendants had a consistent policy of not paying Class Members wages for all
8 hours worked, including by requiring off the clock work and by unlawfully rounding down actual
9 hours worked as addressed above. Additionally, Defendants failed to incorporate non-
10 discretionary cash awards and/or bonuses into the regular rate of pay used to calculate and pay
11 overtime. Defendants, and each of them, have intentionally and improperly rounded, changed,
12 adjusted and/or modified certain employees' hours, including Plaintiff's, in order to avoid paying
13 Class Members all earned and owed straight time and overtime wages and other benefits, in
14 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
15 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
16 have also violated these provisions by requiring Class Members to work through portions of their
17 meal period. Therefore, Class Members were not properly compensated, nor were they paid
18 overtime rates for hours worked in excess of eight hours in a given day, and/or forty hours in a
19 given week. Based on information and belief, Defendants did not make available to Class
20 Members a reasonable protocol for correcting time records when Class Members worked overtime
21 hours or to fix incorrect time entries or those that Defendants unlawfully rounded to the Class
22 Members' detriment.

23 70. Defendants' failure to pay Class Members the unpaid balance of regular wages
24 owed and overtime compensation, as required by California law, violates the provisions of Labor
25 Code §§ 510 and 1198, and is therefore unlawful.

26 71. Additionally, Labor Code § 558(a) provides "any employer or other person acting
27 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
28 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil

1 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
2 pay period for which the employee was underpaid in addition to an amount sufficient to recover
3 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
4 underpaid employee for each pay period for which the employee was underpaid in addition to an
5 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
6 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in
7 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
8 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
9 Wage Orders. Accordingly, Plaintiff and the Class Members seek the remedies set forth in Labor
10 Code § 558.

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

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

20 74. Consequently, pursuant to the California Labor Code, including Labor Code §§
21 204, 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B),
22 Defendants are liable to Class Members for the full amount of all their unpaid wages and overtime
23 compensation, with interest, plus their reasonable attorneys’ fees and costs, as well as the
24 assessment of any statutory penalties against Defendants, and each of them, and any additional
25 sums as provided by the Labor Code and/or other statutes.

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1 **THIRD CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

11 77. Defendants failed to provide Class Members with meal periods as required under
12 the Labor Code. Defendants placed their needs over Class Members lawful meal breaks and this
13 resulted in Class Members consistently having to work through their scheduled meal breaks
14 because the demands of the job would not avail them the opportunity to take a lawfully
15 uninterrupted and off-duty meal break. Furthermore, upon information and belief, on the occasions
16 when Class Members worked more than ten (10) hours in a given shift, they did so without
17 receiving a second uninterrupted thirty (30) minute meal period as required by law. Additionally,
18 to the extent Class Members were permitted to take meal periods, they were prohibited from
19 leaving the premises.

20 78. Defendants thus failed to provide Class Members with meal periods as required by
21 the Labor Code, including by not providing them with the opportunity to take meal breaks, by
22 providing them late or for less than thirty (30) minutes, or by requiring them to perform work
23 during breaks.

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

provided. Defendants failed to compensate Class Members for each meal period not provided or inadequately provided, as required under Labor Code § 226.7.

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

FOURTH CAUSE OF ACTION

REST-BREAK LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

82. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that employers must authorize and permit all employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) work hours.

83. Class Members consistently worked consecutive four (4) hour shifts and were generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC Wage Order, Class Members were entitled to paid rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift, and Defendants failed to provide Class Members with timely rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants placed their needs over Class Members lawful rest breaks and this resulted in Class Members consistently having to work through their scheduled rest breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off-duty rest break. Thus, Class Members were consistently denied of their rest breaks.

84. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that if an employer fails to provide an employee rest period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of

1 compensation for each workday that the rest period is not provided.

2 85. Defendants, and each of them, have therefore intentionally and improperly denied
3 rest periods to Class Members in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of
4 the applicable IWC Wage Orders.

5 86. Defendants failed to authorize and permit Class Members to take rest periods, as
6 required by the Labor Code. Moreover, Defendants did not compensate Class Members with an
7 additional hour of pay at each Class Member's effective hourly rate for each day that Defendants
8 failed to provide them with adequate rest breaks, as required under Labor Code § 226.7.

9 87. Therefore, pursuant to Labor Code § 226.7 and paragraph 12 of the applicable IWC
10 Wage Orders, Class Members are entitled to damages in an amount equal to one (1) hour of wages
11 at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to
12 be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each
13 of them, in a sum as provided by the Labor Code and/or other statutes.

14 **FIFTH CAUSE OF ACTION**
15 **VIOLATION OF LABOR CODE § 226(a)**
16 **(Against All Defendants)**

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

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

26 90. Defendants failed to provide Class Members with accurate itemized wage
27 statements in writing, as required by the Labor Code. Specifically, the wage statements given to
28 Class Members failed to accurately account for unpaid wages and overtime because Defendants

1 had unlawfully rounded time entries to the detriment of the Class Members and their actual hours
2 worked were under-reported due to off the clock work. Moreover, the wage statements given to
3 Class Members failed to incorporate non-discretionary cash awards and/or bonuses into the regular
4 rate of pay used to calculate and pay overtime compensation. Additionally, the wage statements
5 given to Class Members failed to accurately account for premium pay for deficiently provided
6 meal periods and rest breaks. Moreover, the wage statements given to Class Members failed to
7 account for tips and cash payments they received.

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

19 92. Class Members suffered injury as a result of Defendants' knowing and intentional
20 failure to provide them with the accurate wage and hour statements as required by law and are
21 presumed to have suffered injury and be entitled to penalties under Labor Code § 226(e), as the
22 Defendants have failed to provide wage statements with accurate and complete information as
23 required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and Class
24 Members cannot promptly and easily determine from the wage statement alone one or more of the
25 following: (i) The amount of the gross wages or net wages paid to the employee during the pay
26 period or any of the other information required to be provided on the itemized wage statement
27 pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the
28 employer made from gross wages to determine the net wages paid to the employee during the pay

1 period, (iii) The name and address of the employer and, (iv) The name of the employee and only
2 the last four digits of his or her social security number or an employee identification number other
3 than a social security number. For purposes of Labor Code § 226(e) “promptly and easily
4 determine” means a reasonable person [i.e. an objective standard] would be able to readily
5 ascertain the information without reference to other documents or information.

6 93. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
7 § 226(a), Class Members suffered injuries, including among other things confusion over whether
8 they received all wages owed them, the difficulty and expense involved in reconstructing pay
9 records, and forcing them to make mathematical computations to analyze whether the wages paid
10 in fact compensated them correctly for all hours worked.

11 94. Pursuant to Labor Code §§ 226(a) and 226(e) and 1174, and the applicable IWC
12 Wage Order, paragraph 7(B), Class Members are entitled to recover the greater of all actual
13 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
14 hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate
15 penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and
16 reasonable attorneys’ fees.

17 **SIXTH CAUSE OF ACTION**
18 **VIOLATION OF LABOR CODE § 203**
19 **(Against All Defendants)**

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

22 96. Numerous Class Members are no longer employed by Defendants; they either quit
23 Defendants’ employ or were fired therefrom.

24 97. Defendants failed to pay these Class Members all wages due and certain at the time
25 of termination or within seventy-two (72) hours of resignation.

26 98. The wages withheld from these Class Members by Defendants remained due and
27 owing for more than thirty (30) days from the date of separation from employment.

28 99. Defendants failed to pay Class Members without abatement, all wages as defined

1 by applicable California law. Specifically, Plaintiff and Class Members were not paid all regular
2 and overtime wages because Defendants failed to pay for all hours worked, required off the clock
3 work, unlawfully rounded time entries to the detriment of Class Members, and failed to
4 incorporate non-discretionary cash awards and/or bonuses into the regular rate of pay used to
5 calculate and pay for overtime pay, sick pay, and meal and rest break premiums. Additionally,
6 Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as
7 further detailed in this Complaint. Defendants' failure to pay said wages within the required time
8 was willful within the meaning of Labor Code § 203.

9 100. Defendants' failure to pay wages, as alleged entitles these Class Members to
10 penalties under Labor Code § 203, which provides that an employee's wages shall continue until
11 paid for up to thirty (30) days from the date they were due.

12 **SEVENTH CAUSE OF ACTION**
13 **VIOLATION OF LABOR CODE § 204**
14 **(Against All Defendants)**

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

17 102. Labor Code § 204 instructs that: "All wages, ...earned by any person in any
18 employment are due and payable twice during each calendar month, on days designated in
19 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
20 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
21 during which the labor was performed, and labor performed between the 16th and the last day,
22 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
23 month." Additionally, the requirements of this section shall be deemed satisfied by the payment of
24 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
25 calendar days following the close of the payroll period." As detailed above, Defendants
26 maintained a consistently applied policy and practice of not paying all wages earned between the
27 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
28 between the 16th and the last day of the month between the 1st and 10th day of the following month.

1 Defendants similarly failed to pay all wages earned by not more than seven calendar days
2 following the close of the payroll period. These failures arose from Defendants' failure to pay for
3 all hours worked.

4 103. All wages due and owing to Plaintiff and the Class Members, including as required
5 under Labor Code § 510, were therefore not timely paid by Defendants, as addressed in detail
6 above. Additionally, wages required by Labor Code § 1194 and other sections became due and
7 payable to each Class Member in each pay period that he or she was not provided with a meal
8 period or rest period or paid straight or overtime wages or commissions to which he or she was
9 entitled.

10 104. Defendants thus violated Labor Code § 204 by systematically refusing to pay
11 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
12 applicable IWC Wage Orders, employers are required "to pay each employee, on the established
13 payday for the period involved, not less than the applicable minimum wage for all hours worked in
14 the payroll period, ..." Under Labor Code § 1198, "[t]he employment of any employee for longer
15 hours than those fixed by the order or under conditions of labor prohibited by the order is
16 unlawful." Plaintiff and the Class Members may therefore pursue damages and penalties for
17 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
18 penalties under paragraph 20 of the applicable IWC Wage Orders.

19 105. As a result of the unlawful acts of Defendants, Plaintiff and Class Members seek to
20 represent they have been deprived of wages in amounts to be determined at trial, and they are
21 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
22 pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
23 applicable IWC Wage Orders.

24 **EIGHTH CAUSE OF ACTION**

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

26 **AND 1174.5**

27 **(Against All Defendants)**

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

1 full herein.

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

6 108. During the course of Plaintiff's and Class Members' employment, Defendants
7 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as
8 required by California Labor Code § 1174 by failing to pay Plaintiff and Class Members proper
9 wages, overtime, and premium pay as discussed above.

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

12 **NINTH CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE § 246**

14 **(Against All Defendants)**

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

17 111. Labor Code Section 246(i) requires that employers notify employees each pay
18 period of the paid sick leave they have available for use. Pursuant to Labor Code §246(i), "An
19 employer shall provide an employee with written notice that sets forth the amount of paid sick
20 leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
21 the employee's itemized wage statement described in Section 226 or in a separate writing provided
22 on the designated pay date with the employee's payment of wages. If an employer provides
23 unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this
24 section by indicating on the notice or the employee's itemized wage statement 'unlimited.'"

25 112. Defendants failed to provide required California paid sick days and further failed to
26 distribute and maintain required documentation concerning how many sick days were available, in
27 violation of Labor Code §§246, 246(a), 246(b)(1), and 247.5.

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1 **TENTH CAUSE OF ACTION**

2 **REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802**

3 **(Against All Defendants)**

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

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

9 115. Defendants have regularly required Class Members to incur business expenses in the
10 course of performing their required job duties for Defendants including for cell phone expenses and
11 mileage. These expenses incurred by Class Members were necessary and required of them in
12 performing their assigned job duties, but Defendants failed to reimburse Class Members for all such
13 necessary expenditures. Class Members were not reimbursed for those lawful and necessary work
14 related expenses or losses incurred in direct discharge of their job duties during employment with
15 Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the
16 applicable IWC Wage Orders, paragraph 9.

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

20 **ELEVENTH CAUSE OF ACTION**

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

22 **(Against All Defendants)**

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

25 118. Plaintiff, on behalf of herself, Class Members, and the general public, brings this
26 claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as
27 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Class
28 Members and the general public. Plaintiff seeks to enforce important rights affecting the public

1 interest within the meaning of Code of Civil Procedure § 1021.5.

2 119. Plaintiff is a “person” within the meaning of Business & Professions Code
3 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
4 relief, restitution, and other appropriate equitable relief.

5 120. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
6 business practices. By the conduct alleged herein, Defendants’ practices were deceptive and
7 fraudulent in that Defendants’ policy and practice failed to provide the required amount of
8 compensation for missed meal and rest breaks, and failed to adequately compensate Class
9 Members for all hours worked, due to systematic business practices as alleged herein that cannot
10 be justified, pursuant to the applicable California Labor Code and Industrial Welfare Commission
11 requirements in violation of California Business and Professions Code §§ 17200, *et seq.*, and for
12 which this Court should issue injunctive and equitable relief, pursuant to California Business &
13 Professions Code § 17203, including restitution of wages wrongfully withheld.

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

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

27 123. Defendants’ conduct, as alleged above, constitutes unfair competition in violation
28 of the Business & Professions Code § 17200 *et seq.*

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

125. By the conduct alleged herein, Defendants have engaged and continue to engage in a business practice which violates California and federal law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor Code including Sections 203, 204, 226, 226.7, 512, 1194, 1197, and 1198, for which this Court should issue declaratory and other equitable relief pursuant to California Business & Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

TWELFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 2698, ET SEQ.
(Against All Defendants)

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

129. Plaintiff and the Employees in the Class are also Class Members as defined under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and either were or are employed by the alleged violators, Defendants (“Class Members”) during the relevant time

1 period.

2 130. In failing to pay Class Members minimum wages and overtime, not providing
3 proper meal periods, failing to provide accurate wage statements, and failing to Pay Employees
4 upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay
5 Class Members wages on a semimonthly basis as required under Labor Code § 204. Defendants
6 also failed to maintain records showing accurate hours worked daily and the wages paid to Class
7 Members, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders.

8 131. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
9 for Defendants' violation of Labor Code provisions included under Labor Code 2699.5, including
10 the penalty provisions, without limitation, based, inter alia, on the following California Labor
11 Code sections: 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194,
12 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, and 2698 *et seq.*

13 132. More specifically, after complying with the notice procedures of Labor Code §
14 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
15 and other similarly Class Members, a PAGA claim for violations of the above addressed
16 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
17 including as follows:

18 (a) Wage Claims: For failure to provide Plaintiff and the Class Members all earned
19 regular pay and minimum wages for regular hours worked and for failure to pay overtime
20 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
21 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
22 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
23 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
24 to Labor Code § 2699(g)(1);

25 (b) Meal Period Claims: For failure to provide Plaintiff and the Class Members off-
26 duty, timely, and unpaid meal periods and failure to pay one hour of regular pay in lieu thereof,
27 under Labor Code §§ 512, 1198, and 226.7, and Sections 11 of the applicable IWC Wage Order(s)
28 seeking all civil and statutory penalties available and applicable, including under paragraph 20 of

1 the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including
2 sections 558(a)(1)-(3), 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to
3 Labor Code § 2699(g)(1);

4 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to
5 provide Plaintiff and Class Members with accurate, itemized wage statements and failure to
6 maintain employment records for Plaintiff and Class Members under Labor Code §§ 226, 1174,
7 and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all
8 civil and statutory penalties and wages available and applicable under Labor Code §§ 226.3,
9 558, 1174.5, 1199, 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for
10 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing
11 inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a),
12 Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3,
13 which in addition to other penalties provided by law, subjects Defendants to "a penalty in the
14 amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and
15 one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

16 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
17 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
18 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
19 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
21 § 2699(g)(1);

22 (e) Failure to Reimburse Business Expenses: For Defendants' failure to reimburse the
23 necessary work related expenses incurred under Labor Code §§ 1197, 1197.1, 1198, and 2802, and
24 Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available
25 and applicable under Labor Code §§ 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and
26 paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor
27 Code § 2699(g)(1);

28 (f) All Alleged Violations of the IWC Wage Orders and Other Labor Code

1 Sections: For any above addressed violation of the applicable provisions of the IWC Wage
2 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §
3 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and
4 paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to
5 Labor Code § 2699(g)(1).

6 133. As also addressed above, Plaintiff, on behalf of the Class Members, also seeks the
7 penalties and remedies set forth in Labor Code § 558, which states:

8 (a) Any employer or other person acting on behalf of an employer who violates, or
9 causes to be violated, a section of this chapter or any provision regulating hours and days of work
10 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
11 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
12 for which the employee was underpaid in addition to an amount sufficient to recover underpaid
13 wages. (2) For any subsequent violation, one hundred dollars (\$100) for each underpaid employee
14 for each pay period for which the employee was underpaid in addition to an amount sufficient to
15 recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected
16 employee.

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

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

25 134. Plaintiff has exhausted her administrative remedies by sending a certified letter to
26 the LWDA and Defendants postmarked on **April 14, 2024**, addressing in detail the specific
27 provisions of the Labor Code Defendants have violated and addressing the facts and legal theories
28 to support the alleged violations and requested penalties. The LWDA has not provided notice of

1 its intent to investigate the alleged violations within 65 calendar days of the postmark date of the
2 letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed
3 herein and in the PAGA Notice Letter and the original Complaint.

4 **RELIEF REQUESTED**

5 WHEREFORE, Plaintiff prays for the following relief:

- 6 1. For an order certifying this action as a class action;
- 7 2. For compensatory damages in the amount of the unpaid minimum wages for work
8 performed by Class Members and unpaid overtime compensation from at least four (4) years prior
9 to the filing of this action, as may be proven;
- 10 3. For liquidated damages in the amount equal to the unpaid minimum wage and
11 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 12 4. For compensatory damages in the amount of all unpaid wages, including overtime
13 and double-time pay, as may be proven;
- 14 5. For compensatory damages in the amount of the hourly wage made by Class
15 Members for each missed or deficient meal period where no premium pay was paid therefor from
16 four (4) years prior to the filing of this action, as may be proven;
- 17 6. For compensatory damages in the amount of the hourly wage made by Class
18 Members for each day requisite rest breaks were not provided or were deficiently provided where
19 no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as
20 may be proven;
- 21 7. For penalties pursuant to Labor Code § 226(e) for Class Members, as may be
22 proven;
- 23 8. For penalties pursuant to Labor Code § 203 for all Class Members who quit or were
24 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 25 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
26 for all class members in violation of Labor Code § 204, as may be proven;
- 27 10. For penalties pursuant to Labor Code § 246, as may be proven;
- 28 11. For restitution and/or damages for all amounts unlawfully withheld from the wages

1 for all Class Members in violation of Labor Code § 2802, as may be proven;

2 12. For restitution for unfair competition pursuant to Business & Professions Code
3 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

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

7 14. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

8 15. For other wages and penalties under the Labor Code as may be proven;

9 16. For all general, special, and incidental damages as may be proven;

10 17. For an award of pre-judgment and post-judgment interest;

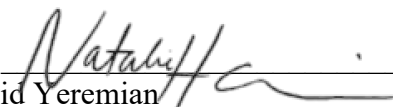
11 18. For an award providing for the payment of the costs of this suit;

12 19. For an award of attorneys' fees; and

13 20. For such other and further relief as this Court may deem proper and just.

14
15 DATED: June 21, 2024

D.LAW, INC.

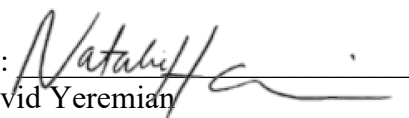
16
17 By: 
18 David Yeremian
19 Natalie Haritonian
20 Jonas Agle
21 Attorneys for Plaintiff JACKIE NGUYEN-
22 SHORT, and all others similarly situated
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28

DEMAND FOR JURY TRIAL

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

DATED: June 21, 2024

D.LAW, INC.

By: 
David Yeremian
Natalie Haritonian
Jonas Agle
Attorneys for Plaintiff JACKIE NGUYEN-
SHORT, and all others similarly situated

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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.

Juan D. Garcia
jgarcia@garciaphan.com
GARCIA & PHAN, A Prof. Law Corp.
 17011 Beach Blvd, Ste. 900
 Huntington Beach, CA 92647

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

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

[X] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

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

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


Silvia Pimentel