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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**

ROCIO SANCHEZ HERRERA, an
individual on behalf of herself and all others
similarly situated,

Plaintiff,

vs.

JONES MANAGEMENT-LA TIJERA,
INC., a California corporation; JONES
MANAGEMENT-MANCHESTER, INC., a
California corporation; JONES
MANAGEMENT-SUNSET, INC., a
California corporation; JONES
MANAGEMENT MCDONALD'S
FLORENCE, INC., a California corporation;
JONES MANAGEMENT-OJAI, INC., a
California corporation; JONES
MANAGEMENT HAWTHORNE INC. a
California corporation; FRANCES R.
JONES, an individual; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 24STCV06173

CLASS ACTION

Assigned for All Purposes To:
Hon. Yvette Palazuelos
Dept.: 9

**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. Failure to Pay Reporting Time Pay; and
10. Violation of Business & Professions Code § 17200 *et seq.*
11. Penalties under PAGA Labor Code § 2698

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff ROCIO SANCHEZ HERRERA (“Plaintiff”) brings this action on behalf of herself and the Class Members who are defined as “all current and former employees within the State of California who, at any time from four (4) years prior to the filing of this lawsuit, are or were employed as non-exempt hourly employees by Defendants JONES MANAGEMENT-LA TIJERA, INC., a California corporation; JONES MANAGEMENT-MANCHESTER, INC., a California corporation; JONES MANAGEMENT-SUNSET, INC., a California corporation; JONES MANAGEMENT MCDONALD’S FLORENCE, INC., a California corporation; JONES MANAGEMENT-OJAI, INC., a California corporation; JONES MANAGEMENT HAWTHORNE INC.; a California corporation; FRANCES R. JONES, an individual; and DOES 1 through 50” (all defendants being collectively referred to herein as “Defendants”).

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

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

THE PARTIES

A. The Plaintiff

4. Plaintiff ROCIO SANCHEZ HERRERA resides in California, during the time period relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee within the State of California.

B. The Defendants

5. Defendant JONES MANAGEMENT-LA TIJERA, INC. is a California corporation and is registered with the California Secretary of State. Defendant JONES MANAGEMENT-LA TIJERA, INC. has been the employer listed on employment records issued to Plaintiff during the relevant time period that Plaintiff was employed with Defendants. Upon information and belief,

1 Defendant JONES MANAGEMENT-LA TIJERA, INC. acted as an integrated enterprise with the
2 other Defendants.

3 6. Defendant JONES MANAGEMENT-MANCHESTER, INC. is a California
4 corporation and is registered with the California Secretary of State. Upon information and belief,
5 Defendant JONES MANAGEMENT-MANCHESTER, INC. acted as an integrated enterprise with
6 the other Defendants.

7 7. Defendant JONES MANAGEMENT-SUNSET, INC. is a California corporation
8 and is registered with the California Secretary of State. Upon information and belief, Defendant
9 JONES MANAGEMENT-SUNSET, INC. acted as an integrated enterprise with the other
10 Defendants.

11 8. Defendant JONES MANAGEMENT MCDONALD'S FLORENCE, INC. is a
12 California corporation and is registered with the California Secretary of State. Upon information
13 and belief, Defendant JONES MANAGEMENT MCDONALD'S FLORENCE, INC. acted as an
14 integrated enterprise with the other Defendants.

15 9. Defendant JONES MANAGEMENT-OJAI, INC. is a California corporation and is
16 registered with the California Secretary of State. Upon information and belief, Defendant JONES
17 MANAGEMENT-OJAI, INC. acted as an integrated enterprise with the other Defendants.

18 10. Defendant JONES MANAGEMENT HAWTHORNE INC. is a California
19 corporation and is registered with the California Secretary of State. Upon information and belief,
20 Defendant JONES MANAGEMENT HAWTHORNE INC. acted as an integrated enterprise with
21 the other Defendants.

22 11. Plaintiff is informed and believes Defendant FRANCES R. JONES is a natural
23 person who employed Plaintiff and the Class Members.

24 12. At all times herein mentioned, Defendant JONES MANAGEMENT-LA TIJERA,
25 INC.; JONES MANAGEMENT-MANCHESTER, INC.; JONES MANAGEMENT-SUNSET,
26 INC.; JONES MANAGEMENT MCDONALD'S FLORENCE, INC.; JONES MANAGEMENT-
27 OJAI, INC.; JONES MANAGEMENT HAWTHORNE INC are referred to as (the "Companies").

28 13. Plaintiff is informed and believes and thereon alleges that the Companies and

1 Owner acted in all respects pertinent to this action as an integrated enterprise. Upon information
2 and belief, the Companies share common management, an interrelationship between operations, a
3 centralized control of labor relations and common ownership or financial control.

4 14. Plaintiff is informed and believes and based thereon alleges that FRANCES R.
5 JONES is a natural person who is the owner, director, officer, or managing agent of the
6 Companies, who violated, or caused to be violated, the Labor Code Sections alleged herein, and is
7 liable under Labor Code §558.1.

8 15. Plaintiff is informed and believes and thereon alleges that Defendant FRANCES R.
9 JONES, at all times relevant to this complaint, was the alter ego of the Companies. Plaintiff
10 alleges, upon information and belief, that Defendant FRANCES R. JONES, either individually or
11 with members of his family, owned, controlled, and dominated the Companies; that he
12 commingled the funds of the Companies with his personal assets, as well as the assets of other
13 entities owned in whole or in part by them; that the failed to segregate the funds of these separate
14 entities; that they wrongly diverted corporate funds or assets to non-corporate uses; that he treated
15 the assets of the Companies as his own; that he held himself out as being personally liable for the
16 debts of the Companies; that he failed to maintain minutes or adequate corporate records and
17 confused the records of various entities; that he used the same office or business location and
18 employed the same employees and attorneys for all entities; that he failed to adequately capitalize
19 the Companies; that he used the Companies as a mere shell, instrumentality, or conduit for the
20 business of an individual or individuals, namely, himself and his family; that he disregarded legal
21 formalities and failed to maintain arm's-length relationships among related entities; that he used
22 the corporate entity to procure labor, services, and merchandise for himself or other entities; that
23 he diverted assets from the Companies to the detriment of creditors, or manipulated assets and
24 liabilities between entities so as to concentrate the assets in one and the liabilities in another; that
25 he used the Companies as subterfuges of illegal transactions; and that he formed and used the
26 Companies to transfer to it his existing liabilities. Plaintiff further avers that recognizing the acts
27 and conduct described in this complaint as those only of the Companies would promote an
28 inequitable and unjust result, namely, the deprivation of Plaintiff's fundamental rights under the

1 Labor Code, as described herein.

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

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

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

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

26 **JURISDICTION AND VENUE**

27 20. This Court has jurisdiction over this Action pursuant to California Code of Civil
28 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought

1 as a Class Action on behalf of similarly situated Class Members of Defendants pursuant to
2 California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial
3 district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief,
4 the obligations and liabilities giving rise to this lawsuit occurred in part in Los Angeles County.
5 Defendants maintain and operate facilities in Los Angeles County and employs Plaintiff and other
6 Class Members in Los Angeles County, while doing business throughout California.

7 **FACTUAL BACKGROUND**

8 21. Class Members consistently worked at Defendants behest without being paid all
9 wages due. Class Members were either not paid by Defendants for all hours worked or were not
10 paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that
11 Defendants failed to pay Class Members all wages due and owing, including by requiring off the
12 clock work, failing to provide meal and rest breaks, failing to furnish accurate wage statements,
13 failing to timely pay wages including final wages, failing to maintain accurate records, and failing
14 to pay reporting time pay all in violation of various provisions of the California Labor Code and
15 applicable Wage Orders.

16 22. During the course of Class Members' employment with Defendants, they were not
17 paid all wages they were owed, including for all work performed resulting in off the clock work.
18 Defendants required Class Members to perform pre-shift and post-shift off the clock work. For
19 instance, at the beginning of Class Members' shift, they were required to spend several minutes
20 waiting for an opportunity to clock in to work, which they did not receive compensation for.

21 23. By implementing policies, programs, practices, procedures and protocols which
22 resulted in off the clock work, Defendants' willful actions resulted in the systematic underpayment
23 of wages to Class Members, including underpayment of overtime pay to Class Members over the
24 relevant time period. For example, the above described off the clock work addressed above caused
25 Plaintiff to begin receiving overtime pay later than they should have.

26 24. As a result of the above described requirements to work off the clock and the other
27 wage violations they endured at Defendants' hands, Class Members were not properly paid all
28 wages earned and all wages owed to them by Defendants, including when working more than

1 eight (8) hours in any given day and/or more than forty (40) hours in any given week.

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

9 26. Therefore, from at least four (4) years prior to the filing of this lawsuit and
10 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
11 Members for all hours worked, and failing to pay minimum wages for all time worked, as required
12 by California law. Defendants thus failed to pay Class Members at least minimum wages for all
13 the time they worked for Defendants in violation of the Labor Code and applicable IWC Wage
14 Orders as the actual times when Class Members were under the control and direction of
15 Defendants was under reported in the hours reflected on the timekeeping records. Furthermore,
16 Defendants' willful actions resulted in the systematic underpayment of wages to Class Members,
17 including underpayment of overtime pay to Class Members over a period of time.

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

26 28. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
27 meal periods and all the legally required paid, off-duty rest periods to Class Members, as required
28 by the applicable Wage Order and Labor Code. Class Members were required to perform work as

1 ordered by Defendants for more than five (5) hours during a shift but were often required to do so
2 without receiving a lawful and timely meal break. In addition to untimely meal periods,
3 Defendants also required Class Members to respond to work demands. Defendants placed their
4 needs over Class Members lawful meal and rest breaks and this resulted in Class Members often
5 having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened
6 ones, because the demands of the job would not avail them the opportunity to take a lawfully
7 uninterrupted and off duty meal and/or rest break. Additionally, to the extent Class Members
8 attempted to take a break, they were prohibited from leaving the premises.

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

16 30. Therefore, for at least four years prior to the filing of this action and through to the
17 present, Defendants have regularly required Class Members to work shifts in excess of five (5)
18 hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes,
19 and shifts in excess of (10) hours without providing them with second meal periods of not less
20 than thirty minutes; nor did Defendants pay Class Members "premium pay," i.e. one hour of
21 wages at each Class Member's effective hourly rate of pay, for each meal period that Defendants
22 failed to provide or deficiently provided.

23 31. Meal period violations thus occurred in one or more of the following manners:

- 24 (a) Class Members were not provided full thirty-minute duty free meal periods
25 for work days in excess of five (5) hours and were not compensated one (1)
26 hour's wages in lieu thereof, all in violation of, among others, Labor Code
27 §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage
28 Order(s);

- 1 (b) Class Members were not provided second full thirty-minute duty free meal
2 periods for work days in excess of ten (10) hours;
- 3 (c) Class Members were required to work through at least part of their daily
4 meal period(s);
- 5 (d) Meal periods were provided after five (5) hours of continuous work during
6 a shift; and
- 7 (e) Class Members were restricted in their ability to take a full thirty-minute
8 meal period.

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

18 33. Rest period violations therefore arose in one or more of the following manners:

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

28 34. Defendants also consistently failed to issue accurate itemized wage statements as

1 required by Labor Code § 226(a). Specifically, the wage statements fail to include the true name of
2 the legal entity employing the Class Members during the pay period and do not comply with
3 Labor Code § 226(a)(8). Additionally, the wage statements given to Class Members failed to
4 accurately account for unpaid wages and overtime because their actual hours worked were under-
5 reported due to off the clock work. Therefore, the wage statements fail to include the total hours
6 worked and do not comply with Labor Code § 226(a)(2). Additionally, the wage statements given
7 to Class Members failed to accurately account for premium pay for deficiently provided meal
8 periods and rest breaks.

9 35. From at least four (4) years prior to filing this lawsuit and continuing to the present,
10 Defendants have thus also had a consistent policy of failing to pay all wages owed to Class
11 Members at the time of their termination of within seventy-two (72) hours of their resignation, as
12 required by California wage-and-hour laws. Specifically, Class Members were not paid all regular
13 and overtime wages because Defendants failed to pay for all hours worked and required off the
14 clock work. Additionally, Defendants failed to pay premium wages owed for unprovided meal
15 periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said
16 wages within the required time was willful within the meaning of Labor Code § 203.

17 36. Moreover, Defendant required Plaintiff and the Class Members to, on occasion,
18 report for a scheduled work day to be told whether work was available for them or not, and when
19 there was no work, Plaintiff and the Class members would be sent home after waiting for hours.
20 On such days when Defendant required Plaintiff and the Class Members to report to work only to
21 be sent home because work was not available, they were not paid required reporting time wages
22 for the hours they waited without receiving their regular hourly rate of pay for them.

23 37. In light of the foregoing, Plaintiff and Class Members bring this action pursuant to,
24 *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 248, 510, 512, 558,
25 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698 et seq., and California
26 Code of Regulations, Title 8, section 11000 *et seq.*

27 38. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
28 and the Class Members seek injunctive relief, restitution, and disgorgement of all benefits

Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or 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

1 by California wage-and-hour laws.

2 i. Subclass 9. Reporting Time Pay Subclass. All Class Members who, within the
3 applicable limitations period, were not paid reporting time pay.

4 j. Subclass 10. UCL Subclass. All Class Members who are owed restitution as a
5 result of Defendants' business acts and practices, to the extent such acts and practices are found to
6 be unlawful, deceptive, and/or unfair.

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

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

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

23 **A. Numerosity**

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

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

B. Commonality

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

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

- 1 k. Whether Defendants violated Labor Code § 204 by failing to timely pay wages;
- 2 l. Whether Defendant failed to pay reporting time pay;
- 3 m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 4 n. Whether Class Members are entitled to equitable relief pursuant to Business and
- 5 Professions Code § 17200 *et seq.*

6 **C. Typicality**

7 46. The claims of the named plaintiff is typical of those of Class Members. The Class

8 Members all sustained injuries and damages arising out of and caused by Defendants' common

9 course of conduct in violation of statutes, as well as regulations that have the force and effect of

10 law, as alleged herein.

11 **D. Adequacy of Representation**

12 47. Plaintiff will fairly and adequately represent and protect the interest of the Class

13 Members. Counsel who represents Class Members are experienced and competent in litigating

14 employment class actions.

15 **E. Superiority of Class Action**

16 48. A class action is superior to other available means for the fair and efficient

17 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and

18 questions of law and fact common to all Class Members predominate over any questions affecting

19 only individual Class Members. Each Class Member has been damaged and is entitled to recovery

20 by reason of Defendants' illegal policies or practices of failing to compensate Class Members

21 properly.

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

23 the fair and efficient adjudication of this controversy, as joinder of all Class Members is

24 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class

25 Members. Further, as the economic or other loss suffered by vast numbers of Class Members may

26 be relatively small, the expense and burden of individual actions makes it difficult for the Class

27 Members to individually redress the wrongs they have suffered. Moreover, in the event

28 disgorgement is ordered, a class action is the only mechanism that will permit the employment of

1 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
2 managing this case as a class action, and proceeding on a class-wide basis will permit Class
3 Members to vindicate their rights for violations they endured which they would otherwise be
4 foreclosed from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to
5 them.

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

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

21 52. Class Members did not discover the fact that they were entitled to all pay under the
22 Labor Code until shortly before the filing of this lawsuit nor was there ever any discussion about
23 Plaintiff's and the Class' waiver of their Constitutional rights of trial by jury, right to collectively
24 organize and oppose unlawful pay practices under California law as well as obtain injunctive relief
25 preventing such practices from continuing. As a result, the applicable statutes of limitation were
26 tolled until such time as Plaintiff and the Class Members discovered their claims.

27 ///

28 ///

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

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

54. Defendants failed to pay Class Members minimum wages for all hours worked. Defendants had a consistent policy of misstating Class Members' time records and failing to pay Class Members for all hours worked. Class Members would work hours and not receive wages, including as alleged above in connection with off the clock work. During the relevant time period, Defendants thus regularly failed to pay minimum wages to Class Members, to their detriment. Additionally, Defendants had a consistent policy of failing to pay Class Members for hours worked during alleged meal and rest periods for which Class Members were consistently denied, as also addressed herein. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Class Members as to minimum wage pay.

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

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

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

58. The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal

1 overtime compensation applicable to the employee is entitled to recover in a civil action the
2 unpaid balance of the full amount of this minimum wage or overtime compensation, including
3 interest thereon, reasonable attorney's fees and costs of suit."

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

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

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

22 62. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
23 1197.1, Class Members are entitled to recover a penalty of \$100.00 for the initial failure to timely
24 pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each
25 employee minimum wages.

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

28 64. Defendants have the ability to pay minimum wages for all time worked and have

1 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
2 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Class Members.

3 65. Wherefore, Class Members are entitled to recover the unpaid minimum wages
4 (including double minimum wages), liquidated damages in an amount equal to the minimum
5 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
6 to California Labor Code § 1194(a). Plaintiff and the other members of the Class further request
7 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
8 assessment of any statutory penalties against Defendants, in a sum as provided by the California
9 Labor Code, including § 558, and/or other applicable statutes.

10 **SECOND CAUSE OF ACTION**

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

12 **(Against All Defendants)**

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

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

21 68. By their conduct, as set forth herein, Defendants violated California Labor Code §
22 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Class
23 Members: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8)
24 hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours
25 worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for
26 hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of
27 eight (8) hours on any seventh day of work in a workweek.

28 69. Defendants had a consistent policy of not paying Class Members wages for all

1 hours worked, including by requiring off the clock. Defendants, and each of them, have
2 intentionally avoided paying Class Members all earned and owed straight time and overtime
3 wages and other benefits, in violation of the California Labor Code, the California Code of
4 Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor
5 Standards and Enforcement. Defendants have also violated these provisions by requiring Class
6 Members to work through portions of their meal period. Therefore, Class Members were not
7 properly compensated, nor were they paid overtime rates for hours worked in excess of eight hours
8 in a given day, and/or forty hours in a given week.

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

12 71. Additionally, Labor Code § 558(a) provides "any employer or other person acting
13 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
14 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
15 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
16 pay period for which the employee was underpaid in addition to an amount sufficient to recover
17 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
18 underpaid employee for each pay period for which the employee was underpaid in addition to an
19 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
20 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in
21 this section are in addition to any other civil or criminal penalty provided by law." Defendants
22 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
23 Wage Orders. Accordingly, Plaintiff and the Class Members seek the remedies set forth in Labor
24 Code § 558.

25 72. Defendants' failure to pay compensation in a timely fashion also constituted a
26 violation of California Labor Code § 204, which requires that all wages shall be paid
27 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
28 violation of that provision of the California Labor Code, Defendants have failed to pay all wages

1 and overtime compensation earned by Class Members. Each such failure to make a timely
2 payment of compensation to Class Members constitutes a separate violation of California Labor
3 Code § 204.

4 73. Class Members have been damaged by these violations of California Labor Code
5 §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

6 74. Consequently, pursuant to the California Labor Code, including Labor Code §§
7 204, 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B),
8 Defendants are liable to Class Members for the full amount of all their unpaid wages and overtime
9 compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the
10 assessment of any statutory penalties against Defendants, and each of them, and any additional
11 sums as provided by the Labor Code and/or other statutes.

12 **THIRD CAUSE OF ACTION**

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

14 **(Against All Defendants)**

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

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

22 77. Defendants failed to provide Class Members with meal periods as required under
23 the Labor Code. Defendants placed their needs over Class Members lawful meal breaks and this
24 resulted in Class Members consistently having to work through their scheduled meal breaks
25 because the demands of the job would not avail them the opportunity to take a lawfully
26 uninterrupted and off-duty meal break. Furthermore, upon information and belief, on the occasions
27 when Class Members worked more than ten (10) hours in a given shift, they did so without
28 receiving a second uninterrupted thirty (30) minute meal period as required by law.

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

79. Moreover, Defendants failed to compensate Class Members for each meal period not provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 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 (1) 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 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

1 each consecutive four (4) hour shift, and Defendants failed to provide Class Members with timely
2 rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants
3 placed their needs over Class Members lawful rest breaks and this resulted in Class Members
4 consistently having to work through their scheduled rest breaks because the demands of the job
5 would not avail them the opportunity to take a lawfully uninterrupted and off-duty rest break.
6 Additionally, to the extent Class Members attempted to take a break, they were prohibited from
7 leaving the premises. Thus, Class Members were consistently denied of their rest breaks.

8 84. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
9 provide that if an employer fails to provide an employee rest period in accordance with this
10 section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
11 compensation for each workday that the rest period is not provided.

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

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

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

24 **FIFTH CAUSE OF ACTION**
25 **VIOLATION OF LABOR CODE § 226(a)**
26 **(Against All Defendants)**

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

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

8 90. Defendants failed to provide Class Members with accurate itemized wage
9 statements in writing, as required by the Labor Code. Specifically, the wage statements failed to
10 include the true legal name of the entity which employed Class Members during the relevant
11 period in violation of Labor Code § 226(a)(8). Additionally, the wage statements fail to include
12 the total hours worked and do not comply with Labor Code § 226(a)(2). The wage statements
13 given to Class Members failed to accurately account for unpaid wages and overtime because their
14 actual hours worked were under-reported due to off the clock work. Additionally, the wage
15 statements given to Class Members failed to accurately account for premium pay for deficiently
16 provided meal periods and rest breaks.

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

28 92. Class Members suffered injury as a result of Defendants' knowing and intentional

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

15 93. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
16 § 226(a), Class Members suffered injuries, including among other things confusion over whether
17 they received all wages owed them, the difficulty and expense involved in reconstructing pay
18 records, and forcing them to make mathematical computations to analyze whether the wages paid
19 in fact compensated them correctly for all hours worked.

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

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SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 203
(Against All Defendants)

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

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

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

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

99. Defendants failed to pay Class Members without abatement, all wages as defined by applicable California law. Specifically, Class Members were not paid all regular and overtime wages because Defendants failed to pay for all hours worked and required off the clock work. Additionally, Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

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

SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 204
(Against All Defendants)

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

102. Labor Code § 204 instructs that: "All wages, ...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,

1 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
2 during which the labor was performed, and labor performed between the 16th and the last day,
3 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
4 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment of
5 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
6 calendar days following the close of the payroll period.” As detailed above, Defendants
7 maintained a consistently applied policy and practice of not paying all wages earned between the
8 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
9 between the 16th and the last day of the month between the 1st and 10th day of the following month.
10 Defendants similarly failed to pay all wages earned by not more than seven calendar days
11 following the close of the payroll period. These failures all arose from either Defendants’ failure to
12 pay for all hours worked or failure to pay all earned commission wages.

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

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

28 105. As a result of the unlawful acts of Defendants, Plaintiff and Class Members seek to

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

5 **EIGHTH CAUSE OF ACTION**

6 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**
7 **AND 1174.5**

8 **(Against All Defendants)**

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

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

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

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

21 **NINTH CAUSE OF ACTION**

22 **FAILURE TO PAY REPORTING TIME PAY**

23 **(Against all Defendants)**

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

26 111. Section 5(A) of the applicable Wage Order(s), requires that for "[E]ach workday an
27 employee is required to report for work and does report, but is not put to work or is furnished less
28 than half said employee's usual or scheduled day's work, the employee shall be paid for half the

1 usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4)
2 hours, at the employee's regular rate of pay, which shall not be less than the minimum wage."

3 112. As addressed in detail above, Defendants followed a uniform policy of failing to
4 pay reporting time pay on in accordance with the applicable IWC Wage Order requirements. For
5 example, Defendant required Plaintiff and the Class members to, on occasion, report for a
6 scheduled work day to be told whether work was available for them or not, and when there was no
7 work, Plaintiff and the Class members would be sent home after waiting for hours. On such days
8 when Defendant required Plaintiff and the Class Members to report to work only to be sent home
9 because work was not available, they were not paid required reporting time wages for the hours
10 they waited without receiving their regular hourly rate of pay for them.

11 113. Plaintiff brings this claim for failure to pay reporting time pay as required by
12 Section 5 of the applicable IWC Wage Orders pursuant to California Labor Code §1198, which
13 instructs that: "the maximum hours of work and the standard conditions of labor fixed by the
14 commission shall be the maximum hours of work and the standard conditions of labor for
15 employees. The employment of any employee for longer hours than those fixed by the order or
16 under conditions of labor prohibited by the order is unlawful."

17 114. Reporting time pay constitutes wages that remain unpaid to Plaintiff and the Class
18 members, despite the fact that they were required by Defendants to report for work and were under
19 Defendants' control during these times and were unable to use their time for their own purposes.
20 The failure to pay for reporting time pay is a violation of the California wage orders and is a
21 failure to pay all wages owed, which is a violation of Labor Code §1198.

22 115. Under Section 20(A) of the applicable IWC Wage Orders, Plaintiff and the Class
23 members are entitled to recover civil penalties, in addition to other penalties, for each underpaid
24 Employee for violation of Section 5 of the IWC Wage Orders in the amount of \$50 for the initial
25 violation and \$100 for subsequent violations during each relevant pay period when Defendants
26 failed to pay reporting time pay. These reporting time pay violations also give rise to violations of
27 Labor Code §§ 203, 226, and under the PAGA.

28 116. Accordingly, Plaintiff seeks to recover unpaid reporting time pay which Defendants

1 failed to pay Plaintiff and the Class members pursuant to Sections 5(A) and 20(A) of the
2 applicable IWC Wage Orders and civil penalties and attorneys' fees and costs as may be
3 authorized.

4 **TENTH CAUSE OF ACTION**

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

6 **(Against All Defendants)**

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

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

14 119. Plaintiff is a "person" within the meaning of Business & Professions Code
15 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
16 relief, restitution, and other appropriate equitable relief.

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

26 121. Wage-and-hour laws express fundamental public policies. Paying employees their
27 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
28 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State

1 vigorously to enforce minimum labor standards, to ensure that employees are not required or
2 permitted to work under substandard and unlawful conditions, and to protect law-abiding
3 employers and their employees from competitors who lower costs to themselves by failing to
4 comply with minimum labor standards.

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

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

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

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

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

26 127. Unless restrained by this Court Defendants will continue to engage in such
27 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
28 should make such orders or judgments, including the appointment of a receiver, as may be

1 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
2 deceptive practice prohibited by the Business & Professions Code, including but not limited to the
3 disgorgement of such profits as may be necessary to restore Class Members to the money
4 Defendants have unlawfully failed to pay.

5 **ELEVENTH CAUSE OF ACTION**
6 **VIOLATION OF LABOR CODE § 2698, ET SEQ.**
7 **(Against All Defendants)**

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

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

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

21 131. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
22 for Defendants’ violation of Labor Code provisions included under Labor Code 2699.5, including
23 the penalty provisions, without limitation, based, inter alia, on the following California Labor
24 Code sections: 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194,
25 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 *et seq.*

26 132. More specifically, after complying with the notice procedures of Labor Code §
27 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
28 and other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed

underlying claims and seeking penalties as specified by the applicable corresponding provisions, including as follows:

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

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

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

1 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
2 citation, ...”

3 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
4 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
5 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
6 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
7 of the applicable IWC Wage Orders, and also for attorneys’ fees and costs pursuant to Labor Code
8 § 2699(g)(1);

9 (e) All Alleged Violations of the IWC Wage Orders and Other Labor Code
10 Sections: For any above addressed violation of the applicable provisions of the IWC Wage
11 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §
12 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and
13 paragraph 20 of the applicable IWC Wage Orders, and for attorneys’ fees and costs pursuant to
14 Labor Code § 2699(g)(1).

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

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

26 (b) If upon inspection or investigation the Labor Commissioner determines that a
27 person had paid or caused to be paid a wage for overtime work in violation of any provision of this
28 chapter, or any provision regulation hours and days of work in any order of the Industrial Welfare

Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

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

134. Plaintiff has exhausted his administrative remedies by sending a certified letter to the LWDA and Defendants postmarked on **March 12, 2024**, addressing in detail the specific provisions of the Labor Code Defendants have violated and addressing the facts and legal theories to support the alleged violations and requested penalties. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed herein and in the PAGA Notice Letter and the original Complaint.

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 Class Members 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 Class Members 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 Class Members 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

1 may be proven;

2 7. For penalties pursuant to Labor Code § 226(e) for Class Members, as may be
3 proven;

4 8. For penalties pursuant to Labor Code § 203 for all Class Members who quit or were
5 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

6 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
7 for all class members in violation of Labor Code § 204, as may be proven;

8 10. For restitution for unfair competition pursuant to Business & Professions Code
9 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

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

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

14 13. For other wages and penalties under the Labor Code as may be proven;

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

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

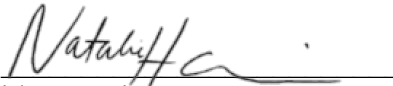
17 16. For an award providing for the payment of the costs of this suit;

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

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

20
21 DATED: May 17, 2024

D.LAW, INC.

22
23 By: 
24 David Yeremian
25 Natalie Haritonian
26 Matthew J. Carraher
27 Attorneys for Plaintiff ROCIO SANCHEZ
28 HERRERA, and all others similarly situated

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DATED: May 17, 2024

By: Natalie Har
David Yeremian
Natalie Haritoonian
Matthew J. Carraher
Attorneys for Plaintiff ROCIO SANCHEZ
HERRERA, 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.

Frances R. Jones, *Agent for Service*
4201 Wilshire Blvd. Suite 215
Los Angeles, CA 90010

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

Katheryn Perez