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of herself and others similarly situated

ELECTRONICALLY FILED

Superior Court of California
County of Sacramento

05/15/2024

By: A. Turner Deputy

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

AMANDA TALBOT, an individual, on behalf
of herself and others similarly situated,

Plaintiff,

vs.

SKYSLOPE, INC., a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 24CV004674

CLASS ACTION

Assigned for All Purposes To:

Hon. Lauri A. Damrell

Dept.: 22

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Failure to Pay Vacation Wages;
4. Failure to Comply with Labor Code § 245 *et seq.* and 246;
5. Meal Period Liability Under Labor Code § 226.7;
6. Rest-Break Liability Under Labor Code § 226.7;
7. Violation of Labor Code § 226;
8. Failure to Maintain Records Under Labor Code §§ 1174 and 1174.5;
9. Violation of Labor Code § 203;
10. Failure to Reimburse Necessary Business Expenses under Labor Code § 2802;
11. Violation of Business & Professions Code § 17200 *et seq.*; and
12. Penalties pursuant to Labor Code § 2699, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff AMANDA TALBOT (hereinafter "Plaintiff"), on behalf of herself and other
2 similarly situated non-exempt, hourly employees employed by Defendants in California
3 (collectively, "Employees"; individually, "Employee"), complains of Defendants, and each of them,
4 as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of herself and all current and former Employees
7 within the State of California who, at any time from four (4) years prior to the filing of this lawsuit,
8 are or were employed as non-exempt, hourly employees by Defendants SKYSLOPE, INC., a
9 California corporation, and DOES 1 through 50, inclusive (all defendants being collectively referred
10 to herein as "Defendants"). Plaintiff alleges that Defendants, and each of them, violated various
11 provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission
12 ("IWC"), and the California Business & Professions Code, and seeks redress for these violations.

13 2. Plaintiff is a resident of California and, during the time period relevant to this
14 Complaint, was employed by Defendants as a non-exempt hourly employee within the State of
15 California, county of Sacramento. Defendant SKYSLOPE, INC. is a software company with its
16 principal place of business in Sacramento, California. Plaintiff and the other Class members were
17 employed by Defendants as hourly, non-exempt Employees by Defendants throughout California.
18 Plaintiff worked at Defendants' behest without being paid all wages due and without being provided
19 all required breaks. More specifically, Plaintiff and the other similarly situated Class members were
20 employed by Defendants and (1) shared similar job duties and responsibilities (2) were subjected to
21 the same policies and practices (3) and endured similar violations at the hands of Defendants as the
22 other Employee Class members who served in similar and related positions.

23 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
24 and failed to record accurate time worked by these Employees, failed to pay them at the appropriate
25 rates for all hours worked, failed to pay all wages due and owing at termination or resignation, and
26 provided Plaintiff and the Class members with inaccurate wage statements that prevented them from
27 learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the Class
28 with lawful meal and rest periods, as Employees were required to remain under Defendants' control

1 and were not provided with the opportunity to take full uninterrupted and duty-free rest periods and
2 meal breaks, as required by the Labor Code and the applicable paragraphs of the IWC Wage Orders.

3 4. Defendant SKYSLOPE, INC. is a California corporation with its offices and
4 headquarters located in Sacramento, California. SKYSLOPE, INC. is listed as the employer on
5 various documents issued to Plaintiff, and upon information and belief Class members, such as
6 Plaintiff's wage statements. SKYSLOPE, INC. lists an address in Sacramento, California with the
7 California Secretary of State, and employs Plaintiff and the Employees throughout California
8 including Sacramento County. Defendants conduct business throughout California.

9 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
10 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as
11 a Class Action on behalf of similarly situated Employees of Defendants pursuant to California Code
12 of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to
13 California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and
14 liabilities giving rise to this lawsuit occurred, at least in part in Sacramento County where
15 Defendants maintains an office.

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

24 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
25 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out
26 a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each
27 Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all
28 respects as the employers or joint employers of Employees. Defendants, and each of them, exercised

1 control over the wages, hours or working conditions of Employees, created and implemented the
2 policies and practices that governed the employment of Plaintiff and the Class members and dictated
3 their job duties and responsibilities, or otherwise suffered or permitted Plaintiff and the other
4 Employee Class members to work, or engaged them, thereby creating a common law employment
5 relationship with the Employee Class members. Therefore, Defendants, and each of them, employed
6 or jointly employed the Employee Class members.

7 **FACTUAL BACKGROUND**

8 8. The Employees who comprise the Class, including Plaintiff, are non-exempt
9 employees pursuant to the applicable Wage Order of the Industrial Welfare Commission (“IWC”).
10 During the period of four years prior to the filing of this action through its resolution, the Employee
11 Class members were employed by Defendants and worked in non-exempt positions at the direction
12 of Defendants in the State of California. Plaintiff and the Class members were either not paid by
13 Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime
14 rates. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class members all wages
15 due and owing, including by requiring off the clock work, failing to provide meal and rest breaks,
16 and failing to furnish accurate wage statements, all in violation of various provisions of the
17 California Labor Code and applicable paragraphs of the IWC Wage Orders.

18 9. During the course of Plaintiff and the Class members’ employment with
19 Defendants, they were not paid all wages they were owed, including for all work performed
20 (resulting in “off the clock” work) and for all their overtime hours worked. This has resulted in
21 systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders.
22 Upon information and belief, Defendants employ other non-exempt, hourly employees in similar
23 jobs and related positions at their locations and facilities in California.

24 10. Defendants required Plaintiff and the Class members to perform work related duties
25 off the clock and to remain under Defendants’ control during times when they should have been on
26 break or otherwise off the clock, including before and after their work shifts. Plaintiff and, upon
27 information and belief, the other Class members were required to perform work before their
28 scheduled shift start times and to perform other off the clock work, including booting up and

1 logging into the computers prior to clocking in. Upon information and belief, Defendants failed to
2 compensate Plaintiff and the Class members for the time they were under control of Defendants
3 before their scheduled shift start time.

4 11. Plaintiff and, upon information and belief, the other Class members were also
5 required to work past their scheduled shift end time and perform work after clocking out for the day
6 and/or during unpaid meal breaks, including immediately responding to work related calls and
7 messages on their personal cell phones. Defendants also required Plaintiff and Class members to
8 attend monthly and quarterly meetings at that office while Plaintiff and Class members were off
9 the clock. Upon information and belief, Defendants failed to compensate Plaintiff and the Class
10 members for the time they were under control of Defendants after clocking out.

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

17 13. Moreover, Defendants did not utilize a time keeping device that allowed Employees
18 to accurately punch in and punch out for their shifts and meal breaks. Instead, Employees were
19 required to manually log their scheduled shift times on an electronic timesheet as hours worked
20 regardless of actual time worked. Similarly, Employees were required to manually log on an
21 electronic timesheet a 30-minute lunch, rather than punch in and out for meal periods. Defendants
22 maintained this policy and practice with the ostensible intent of underpaying Employees for the
23 hours they were actually under Defendants' control. As a result, Employees' timesheets did not
24 accurately reflect all the time they were under the direction and control of Defendants, for which
25 they were not compensated.

26 14. Defendants generally discouraged employees from incurring overtime. Plaintiff felt
27 pressured by management and work demands placed upon her to work off the clock but only log
28 her scheduled shift time as time worked, and feared being terminated if she did otherwise. Upon

1 information and belief, the other Class members were subjected to similar common policies and
2 practices and were subjected to similar scheduling requirements and off the clock work
3 requirements.

4 15. Defendants' unlawful timekeeping practices regarding off the clock work also
5 resulted in failure to pay Plaintiff and the Class members for overtime hours worked at the correct
6 overtime premium rate. With the hours worked off the clock before shifts commenced, and when
7 Plaintiff and the Class members worked past eight hours on their shifts, they were not paid an
8 overtime premium for these hours worked over eight.

9 16. By the off the clock work addressed above, the Employees in the Class began
10 incurring overtime hours before the alleged eight hour mark when Defendants began paying any
11 overtime rates of pay, and Defendants thus failed to pay all overtime hours at the correct overtime
12 rate of pay.

13 17. Plaintiff was therefore not paid for all hours worked at the required minimum,
14 overtime and double time wage rates due to Defendants' uniformly applied and unlawful policy
15 and practice of requiring him to work off the clock and without pay. Defendants systematically
16 underpaid Plaintiff and the Class members by failing to pay them at the required overtime rates for
17 all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a day
18 at the required double time rate. Upon information and belief, the Class members were bound by
19 similar scheduling and timekeeping policies and endured similar violations at Defendants' hands
20 as Plaintiff.

21 18. The failure to pay for all hours worked and underpayment of wages to Plaintiff and
22 the Class members is and has been a direct consequence of Defendants' unlawful compensation
23 policies and practices, which upon information and belief applied uniformly to the Class members
24 working for Defendants throughout California. As a result of the above-described unlawful
25 requirements to work off the clock, the failure to accurately record all hours worked and pay wages
26 at the correct rates, and the other wage violations they endured at Defendants' hands, Plaintiff and
27 the Class members were not properly paid all wages earned and all wages owed to them by
28 Defendants, including when working more than eight hours in any given day and/or more than forty

1 hours in any given week.

2 19. Therefore, from at least four years prior to the filing of this lawsuit and continuing
3 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
4 hours worked and failing to pay minimum wages for all time worked, as required by California law.
5 Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
6 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
7 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
8 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
9 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

10 20. Additionally, from at least four (4) years prior to the filing of this lawsuit and
11 continuing to the present, Defendants have regularly required Employees to work shifts in excess of
12 five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30)
13 minutes, and shifts in excess of ten (10) hours without providing them with second meal periods of
14 not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one hour of
15 wages at each Employee’s effective hourly rate of pay, for each meal period that Defendants failed
16 to provide or deficiently provided. The above described off the clock work contributed to
17 Defendants’ common policy of failing to provide lawful meal periods to Plaintiff and the Class
18 members, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s).
19 Defendants similarly failed to authorize and permit Plaintiff and the employee Class Members to
20 take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the
21 IWC Wage Order(s).

22 21. As mentioned above, Defendants also paid Plaintiff and Employees non-
23 discretionary bonuses and/or commissions. However, upon information and belief, Defendants
24 failed to incorporate all remunerations, including non-discretionary bonuses and/or commissions,
25 into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate.
26 Therefore, during times when Plaintiff and Employees worked overtime and received non-
27 discretionary bonuses and/or commissions, Defendants failed to pay all overtime wages by paying
28 a lower overtime rate than required.

1 22. In addition, Plaintiff, and other Class members, were required to work long
2 hours, usually 10-12 hours per work shift. Yet Defendants systematically failed to pay them for
3 all their hours worked. Employees were scheduled to work at least 4 days a week, and 10 hours
4 per day under an alternative workweek schedule. Plaintiff contends that Defendants failed to pay
5 Employees at the required overtime rate for all hours over eight in a shift, or over forty in a week,
6 which also impacted when he should have been paid at the double time rate and resulted in
7 underpayment of double time for those hours over twelve worked in a shift. Plaintiff contends
8 there was not an enforceable alternative work week election conducted for the facility, or if it
9 was, it was improperly conducted and/or reported to the DIR's Alternative Workweek Elections
10 Database. To the extent Plaintiff's facility and any other facilities in California were operating
11 under a similarly invalid or ineffectual alternative workweek election, Plaintiff and those
12 similarly situated Class members were not paid at least two hours of overtime premium wages on
13 every work shift for the hours between their eighth and tenth worked.

14 23. Likewise, from at least four (4) years prior to the filing of this lawsuit and continuing
15 to the present, Defendants paid Employees non-discretionary bonuses and/or commissions.
16 However, upon information and belief, Defendants failed to incorporate all remunerations, including
17 non-discretionary bonuses and/or commissions, into the calculation of the regular rate of pay for
18 purposes of calculating sick pay. Therefore, during times when Employees worked overtime and
19 received non-discretionary bonuses and/or commissions, Defendants failed to pay all sick pay by
20 paying a lower overtime rate than required.

21 24. Similarly, from at least four (4) years prior to the filing of this lawsuit and continuing
22 to the present, Defendants paid Plaintiff and Employees non-discretionary bonuses and/or
23 commissions and/or shift differentials. However, upon information and belief, Defendants failed to
24 incorporate all remunerations, including non-discretionary bonuses, commissions and/or shift
25 differentials, into the calculation of the regular rate of pay for purposes of calculating vacation pay.
26 Therefore, during times when Plaintiff and Employees worked overtime and received non-
27 discretionary bonuses, commissions and/or shift differentials, Defendants failed to pay all vacation
28 pay by paying a lower overtime rate than required.

1 25. Moreover, as discussed above, Defendants had a consistent policy and practice of
2 requiring Plaintiff and Employees to manually log their scheduled shift times as hours worked rather
3 than actual time worked, including meal periods. Specifically, Employees were required to manually
4 log a 30-minute lunch break regardless of whether they took a full, uninterrupted 30-minute lunch
5 break. These inaccurate time entries were inputted into Defendants' payroll system from which
6 wage statements and payroll checks were created.

7 26. Defendants thus failed to provide all the legally required unpaid, off-duty meal
8 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
9 members, as required by the applicable Wage Order and Labor Code. Additionally, as addressed
10 above, Defendants followed a practice of requiring off the clock work in a manner that would impact
11 when Employees were to receive meal periods and rest breaks, thus leading to further violations.

12 27. As a result, Defendants' failure to provide Plaintiff and the Class members with all
13 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods
14 is and will be evidenced by Defendants' business records, or lack thereof. As further detailed above,
15 Defendants also failed to pay Employees "premium pay," i.e. one hour of wages at each Employee's
16 effective regular hourly rate of compensation for each meal period or rest break that Defendants
17 failed to provide or deficiently provided.

18 28. Defendants have also consistently failed to provide Class members with timely,
19 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,
20 including by the above-described requirement of off the clock work, failure to pay all overtime and
21 double time wages owed, and failure to pay premium wages for unprovided or otherwise unlawful
22 meal and rest breaks, or by miscalculating any overtime or meal period or rest break premium wages.
23 Defendants have also made it difficult to account with precision for the unlawfully withheld wages
24 and meal and rest period compensation owed to Plaintiff and the Class, during the liability period,
25 including because they did not calculate the regular rate of pay correctly when paying overtime or
26 meal period premiums and because they did not implement and preserve a record-keeping method
27 as required for non-exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7
28 of the applicable California Wage Orders. Upon information and belief, time clock punches were

1 not maintained or were not accurately maintained for work shifts and meal periods, which were
2 automatically presumed by Defendants to have been lawfully provided when they were not.
3 Defendants also failed to accurately record and pay for all regular and overtime hours worked and
4 submitted by Plaintiff and the Class members, including by failing to pay all overtime hours at the
5 correctly calculated overtime premium rate.

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

16 30. Additionally, Defendants have consistently failed to keep accurate time and wage
17 records as required by California wage-and-hour laws.

18 31. As mentioned above, Defendants required Plaintiff and the Class members to work
19 hours off the clock for which they were not compensated, and endure off the clock work during
20 interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime
21 premium wages owed for work conducted on a work shift and a workday, as addressed above.
22 Therefore, Defendants have also followed a uniform and consistent policy of failing to pay all wages
23 owed to Plaintiff and other similarly situated Employees at the time of their termination or within
24 seventy-two hours of their resignation, as required by California wage-and-hour laws.

25 32. Additionally, Defendants regularly required Plaintiff and the Class members to incur
26 necessary business expenses in the course of performing their required job duties without
27 reimbursement. For example, Defendants required Plaintiff and the Class members to their personal
28 mobile phone devices for work-related activities, such as requiring Plaintiff and Class members to

1 download apps for work related purposes and responding to work related calls and messages outside
2 working hours. Plaintiff worked from home and was not reimbursed for any of the operating costs
3 from working from home, such as internet and utilities. Plaintiff also had to purchase various
4 computer equipment and office supplies necessary to perform her job duties from home, such as a
5 chair, desk, headphones, riser for laptop, wifi booster, and desk lamp. Indeed, Defendants had a
6 written policy that stated Employees are personally responsible for ongoing operating costs when
7 working from home. Upon information and belief, Class members were subject to the same
8 requirements. However, Plaintiff and Class members were not fully reimbursed for these necessary
9 expenses as required under Labor Code § 2802.

10 33. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
11 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq.*,
12 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698,
13 2699, *et seq.* and 2802.

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

18 **CLASS ALLEGATIONS**

19 35. Plaintiff brings this class action on behalf of herself and all others similarly situated
20 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the Class” or
21 “Class members”) defined as follows: “All individuals employed by Defendants at any time during
22 the period of four (4) years prior to the filing of this lawsuit and ending on a date as determined by
23 the Court (“the Class Period”), and who have been employed as non-exempt, hourly employees by
24 Defendants’ within the State of California.” Further, Plaintiff seeks to represent the Subclasses
25 composed of and defined as follows:

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

28 ///

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

4 c. Subclass 3. Vacation Wages Subclass. All Class members who were not
5 compensated at the Employee's regular rate of pay for their vacation wages.

6 d. Subclass 4. Sick Pay Subclass. All Class members who were not compensated at the
7 Employee's regular rate of pay for their sick pay wages.

8 e. Subclass 5. Meal Period Subclass. All Class members who were subject to
9 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
10 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

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

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

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

20 h. Subclass 9. Termination Pay Subclass. All Class members who, within the
21 applicable limitations period, either voluntarily or involuntarily separated from their employment
22 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
23 termination.

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

27 i. Subclass 11. UCL Subclass. All Class members who are owed restitution as a result
28 of Defendants' business acts and practices, to the extent such acts and practices are found to be

1 unlawful, deceptive, and/or unfair.

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

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

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

19 **A. Numerosity**

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

26 **B. Commonality**

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

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

- 5 a. Whether Defendants failed to pay Employees minimum wages;
- 6 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 7 c. Whether Defendants failed to pay Employees overtime as required under Labor Code
8 § 510;
- 9 d. Whether Defendants failed to pay Employees vacation wages as required under
10 Labor Code § 227.3;
- 11 e. Whether Defendants failed to pay Employees sick pay as required under Labor Code
12 § 245;
- 13 f. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC
14 Wage Orders, by failing to provide Employees with requisite meal periods or
15 premium pay in lieu thereof;
- 16 g. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
17 Orders, by failing to authorize and permit Employees to take requisite rest breaks or
18 provide premium pay in lieu thereof;
- 19 h. Whether Defendants violated Labor Code § 226(a) by providing Employees with
20 inaccurate wage statements;
- 21 i. Whether Defendants failed to keep accurate time and wage records;
- 22 j. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
23 wages and compensation due and owing at the time of termination of employment;
- 24 k. Whether Defendants' conduct was willful;
- 25 l. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
26 Orders by failing to maintain accurate records of Class members' earned wages and
27 work periods;

28 ///

- 1 m. Whether Defendants violated Labor Code § 1194 by failing to compensate all
2 Employees during the relevant time period for all hours worked, whether regular or
3 overtime;
- 4 n. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary
5 business expenses incurred by Employees;
- 6 o. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*;
- 7 p. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 8 q. Whether Employees are entitled to equitable relief pursuant to Business and
9 Professions Code § 17200 *et seq.*

10 **C. Typicality**

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

17 **D. Adequacy of Representation**

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

21 **E. Superiority of Class Action**

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

27 44. As to the issues raised in this case, a class action is superior to all other methods for
28 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 a
6 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 Employees
8 to vindicate their rights for violations they endured which they would otherwise be foreclosed from
9 receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

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

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

25 47. Plaintiff and the Employees in the Class did not discover the fact that they were
26 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
27 ever any discussion about Plaintiff's and the Class' waiver of their Constitutional rights of trial by
28 jury, right to collectively organize and oppose unlawful pay practices under California law as well

1 as obtain injunctive relief preventing such practices from continuing. As a result, the applicable
2 statutes of limitation were tolled until such time as Plaintiff and the Class members discovered their
3 claims.

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

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

9 49. Defendants failed to pay Employees minimum wages for all hours worked.
10 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
11 would work hours and not receive all wages owed, including as alleged above in connection with
12 off the clock work and the miscalculation of the regular rate of pay, including all the time required
13 to remain on duty and under Defendants' control during breaks and due to the work demands placed
14 upon them by Defendants' management. To the extent any local wage ordinances were also
15 applicable to paying the employees an hourly rate above the minimum wage rate, Defendants failed
16 to comply with the local wage ordinances. Defendants' uniform pattern of unlawful wage and hour
17 practices manifested, without limitation, applicable to the Class as a whole, as a result of
18 implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the
19 other members of the Class as to minimum wage pay.

20 50. In California, employees must be paid at least the then applicable state minimum
21 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and
22 paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Additionally, pursuant
23 to California Labor Code § 204, other applicable laws and regulations, and public policy, an
24 employer must timely pay its employees for all hours worked. Defendants failed to do so.

25 51. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:
26 "The minimum wage for employees fixed by the commission is the minimum wage to be paid to
27 employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable
28 minimum wage rate fixed by the commission for work during the relevant period is found in the

1 Wage Orders.

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

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

14 54. In committing these violations of the California Labor Code, Defendants
15 inaccurately recorded times that did not reflect their actual hours worked, miscalculated hours or
16 rates or otherwise underpaid the actual time worked by Plaintiff and other members of the Class,
17 including by requiring off the clock work including when operating under alternative workweek
18 agreements, as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment
19 of all earned wages, and other benefits in violation of the California Labor Code, the Industrial
20 Welfare Commission requirements and other applicable laws and regulations. As a result of these
21 violations, Defendants also failed to timely pay all wages earned in accordance with California
22 Labor Code § 1194.

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

27 56. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
28 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial failure

1 to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each
2 employee minimum wages.

3 57. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are further
4 entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and interest
5 thereon.

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

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

24 **SECOND CAUSE OF ACTION**

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

26 **(Against All Defendants)**

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

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

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

15 63. Defendants had a consistent policy of not paying Employees wages for all hours
16 worked at their required regular, overtime, and double-time rates, including by requiring off the
17 clock work, as addressed above, by under-reporting actual hours worked, and by requiring
18 Employees to do so as well.

19 64. Defendants, and each of them, have intentionally and improperly under-recorded
20 Employees’ hours, including Plaintiff’s, or required Plaintiff and the Class members to do so, or
21 otherwise caused them to work off the clock to avoid paying Plaintiff and the Class members all
22 earned and owed straight time and overtime wages and other benefits, in violation of the California
23 Labor Code, the California Code of Regulations and the IWC Wage Orders and guidelines set forth
24 by the Division of Labor Standards and Enforcement. Defendants have also violated these
25 provisions by requiring Plaintiff and other similarly situated non-exempt employees to work through
26 meal periods or remain under Defendants’ control when they were required to be clocked out or to
27 otherwise work off the clock to complete their daily job duties and respond to demands from
28 customers and managers, and by operating under invalid or unenforceable alternative work week

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

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

14 66. Additionally, Labor Code § 558(a) provides "any employer or other person acting
15 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
16 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
17 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
18 pay period for which the employee was underpaid in addition to an amount sufficient to recover
19 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
20 employee for each pay period for which the employee was underpaid in addition to an amount
21 sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid
22 to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in this
23 section are in addition to any other civil or criminal penalty provided by law." Defendants have
24 violated provisions of the Labor Code regulating hours and days of work as well as the IWC Wage
25 Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor Code §
26 558.

27 67. Defendants' failure to pay compensation in a timely fashion also constituted a
28 violation of California Labor Code § 204, which requires that all wages shall be paid semimonthly.

1 From four (4) years prior to the filing of this lawsuit to the present, in direct violation of that
2 provision of the California Labor Code, Defendants have failed to pay all wages and overtime
3 compensation earned by Employees. Each such failure to make a timely payment of compensation
4 to Employees constitutes a separate violation of California Labor Code § 204.

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

12 69. Consequently, pursuant to the California Labor Code, including Labor Code §§ 204,
13 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
14 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
15 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
16 their reasonable attorneys’ fees and costs, as well as the assessment of any statutory penalties
17 against Defendants, and each of them, and any additional sums as provided by the Labor Code
18 and/or other statutes.

19 **THIRD CAUSE OF ACTION**
20 **FAILURE TO PAY VACATION WAGES**
21 **(Against All Defendants)**

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

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

28 ///

72. Defendants paid non-discretionary bonuses and/or commissions to Employees but Defendants failed to include these forms of remuneration in the regular rate of pay upon which vacation wages were calculated and paid.

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

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

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

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

76. Defendants paid non-discretionary bonuses and/or commissions to Employees but Defendants failed to include these forms of remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than calculating the amount of paid sick time due when sick time is used according to the requirements set forth in California Labor Code § 246(1), Defendants paid sick leave to Employees at a lower rate, in violation of the law.

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

FIFTH CAUSE OF ACTION

MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

79. Employees regularly worked shifts greater than five (5) hours and in some instances, greater than ten (10) hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC

1 Wage Order, an employer may not employ someone for a shift of more than five (5) hours without
2 providing him or her with a meal period of not less than thirty (30) minutes or for a shift of more
3 than ten (10) hours without providing him or her with a second meal period of not less than thirty
4 (30) minutes.

5 80. Defendants failed to provide Employees with meal periods as required under the
6 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
7 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
8 provided them after Employees worked beyond the fifth hour of their shifts or Employees otherwise
9 had them shortened and interrupted by work demands and requirements to perform off the clock
10 work and remain under Defendants' control. Furthermore, upon information and belief, on the
11 occasions when Employees worked more than ten (10) hours in a given shift, they did so without
12 receiving a second uninterrupted thirty (30) minute meal period as required by law.

13 81. Defendants thus failed to provide Plaintiff and the Class members with meal periods
14 as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order, including by
15 not providing them with the opportunity to take meal breaks, by providing them late or for less than
16 thirty (30) minutes, or by requiring them to perform work during breaks.

17 82. Moreover, Defendants failed to compensate Employees for each meal period not
18 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and 20
19 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee
20 a meal period in accordance with this section, the employer shall pay the employee one (1) hour of
21 pay at the employee's regular rate of compensation for each workday that the meal period is not
22 provided. Additionally, as detailed above, when Defendants did pay meal period premiums, they
23 did so at the normal regular rate of pay without factoring in all forms or remuneration/compensation
24 or by otherwise incorrectly calculating the regular rate.

25 83. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
26 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal to
27 one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or
28 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory penalties

1 against the Defendants, and each of them, in a sum as provided by the Labor Code and other statutes
2 and applicable IWC Wage Order paragraphs.

3 **SIXTH CAUSE OF ACTION**

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

5 **(Against All Defendants)**

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

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

11 86. Employees consistently worked consecutive four (4) hour shifts and were generally
12 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit
13 them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable IWC Wage
14 Order, Employees were entitled to paid rest breaks of not less than ten (10) minutes for each
15 consecutive four (4) hour shift, and Defendants failed to provide Employees with timely rest breaks
16 of not less than ten (10) minutes for each consecutive four (4) hour shift. Employees were often
17 required to work or to otherwise remain under Defendants' control during rest periods, including by
18 responding to work requirements or walk to break areas, and had breaks provided untimely as a
19 result of the above described off the clock work. Plaintiff and the Class members were also not
20 permitted to leave their work premises during rest breaks.

21 87. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders
22 provide that if an employer fails to provide an employee rest period in accordance with this section,
23 the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
24 compensation for each workday that the rest period is not provided. Defendants failed to do so.

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

28 ///

89. Defendants failed to authorize and permit Plaintiff and the Class members to take rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees with an additional hour of pay at each Employee's regular rate for each day that Defendants failed to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders. Additionally, as detailed above, when Defendants did pay rest period premiums, they did so at the normal regular rate of pay without factoring in all forms or remuneration/compensation or by otherwise incorrectly calculating the regular rate

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

SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

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

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

93. Defendants failed to provide Plaintiff and the similarly situated Employee Class members with accurate itemized wage statements in writing, as required by the Labor Code and paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to Employees by Defendants failed to accurately account for wages, overtime, and premium pay,

1 including for all overtime and double time hours worked, for deficient meal periods and rest breaks,
2 all of which Defendants knew or reasonably should have known were owed to the Employees, as
3 alleged above. Moreover, Employees' wage statements did not include: the total hours worked in
4 violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in
5 effect during the pay period and the corresponding number of hours worked at each such rate in
6 violation of Labor Code § 226 (a)(9). Additionally, Defendants failed in their affirmative obligation
7 to keep accurate records of the correct overtime wages based on proper regular rate calculations that
8 included non-discretionary bonuses, commissions and/or shift differentials earned, and the total
9 amount of compensation of their Employees. Thus, the wage statements provided to Employees
10 were confusing and required Employees to engage in discovery and refer to outside sources to verify
11 whether their pay was correct and potentially resulting in a miscalculation by the Employees.

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

24 95. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
25 and intentional failure to provide them with the wage and hour statements as required by law and
26 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
27 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
28 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),

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

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

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

25 98. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
26 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of
27 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
28 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate

1 penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to an award
2 of costs and reasonable attorneys' fees.

3 **EIGHTH CAUSE OF ACTION**

4 **FAILURE TO MAINTAIN RECORDS UNDER LABOR CODE §§ 1174 and 1174.5**

5 **(Against All Defendants)**

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

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

12 101. During the course of Plaintiff's and Employees' employment, Defendants
13 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
14 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
15 overtime, and premium pay as discussed above.

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

18 **NINTH CAUSE OF ACTION**

19 **VIOLATION OF LABOR CODE § 203**

20 **(Against All Defendants)**

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

23 104. Plaintiff and numerous Class members are no longer employed by Defendants; they
24 either quit Defendants' employ or were fired therefrom.

25 105. Defendants failed to pay these Employees all wages due and certain at the time of
26 termination or within seventy-two (72) hours of resignation.

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

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

8 108. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
9 are required "to pay each employee, on the established payday for the period involved, not less than
10 the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor Code §
11 1198, "[t]he employment of any employee for longer hours than those fixed by the order or under
12 conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members may
13 therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph 4(B) of
14 the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC
15 Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants
16 are subject to a fine of not less than \$100 for causing Employees "to work for longer hours than
17 those fixed, or under conditions of labor prohibited by an order of the commission" or if the
18 employer pays "a wage less than the minimum fixed by an order of the commission" or
19 "violates...any provision of this chapter or any order or ruling of the commission."

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

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TENTH CAUSE OF ACTION
FOR FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES
UNDER LABOR CODE § 2802
(Against All Defendants)

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

111. Plaintiff is informed and believes and based thereon alleges that throughout the period applicable, Defendants required Plaintiff and the Class members to pay for necessary work related expenses they incurred. For example, Defendants required Plaintiff and the Class members to their personal mobile phone devices for work-related activities, such as requiring Plaintiff and Class members to download apps for work related purposes and responding to work related calls and messages outside working hours. Plaintiff worked from home and was not reimbursed for any of the operating costs from working from home, such as internet and utilities. Plaintiff also had to purchase various computer equipment and office supplies necessary to perform her job duties from home, such as a chair, desk, headphones, riser for laptop, wifi booster, and desk lamp. Indeed, Defendants had a written policy that stated Employees are personally responsible for ongoing operating costs when working from home. Upon information and belief, Class members were subject to the same requirements. Plaintiff and the Class members must be fully reimbursed for necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do so.

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

113. Defendants' knowing and willful failure to reimburse lawful necessary work related expenses and losses to Plaintiff and the Class members resulted in damages because, among other things, Defendants did not inform employees of their right to be reimbursed for those work related expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard

1 to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and
2 necessary expenses was an expected and essential function of their employment with Defendants
3 and that failure to incur those expenses would have adverse consequences on their employment.

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

10 **ELEVENTH CAUSE OF ACTION**

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

12 **(Against All Defendants)**

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

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

20 117. Plaintiff is a "person" within the meaning of Business & Professions Code
21 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
22 relief, restitution, and other appropriate equitable relief.

23 118. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
24 practices. By the conduct alleged herein, Defendants' practices were deceptive and fraudulent in
25 that Defendants' policy and practice failed to provide the required amount of compensation for
26 missed meal and rest breaks, and failed to adequately compensate Plaintiff and Class members for
27 all hours worked, due to systematic business practices as alleged herein that cannot be justified,
28 pursuant to the applicable California Labor Code and Industrial Welfare Commission requirements

1 in violation of California Business and Professions Code §§ 17200, *et seq.*, and for which this Court
2 should issue injunctive and equitable relief, pursuant to California Business & Professions Code §
3 17203, including restitution of wages wrongfully withheld.

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

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

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

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

23 123. By the conduct alleged herein, Defendants have engaged and continue to engage in a
24 business practice which violates California and federal law, including but not limited to, the
25 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
26 Code including Sections 204, 221, 226, 226.7, 245, 246, 227.3, 510, 512, 1182.12, 1194, 1194.2,
27 1197, 1198 and 2802 for which this Court should issue declaratory and other equitable relief pursuant
28 to California Business & Professions Code § 17203 as may be necessary to prevent and remedy the

1 conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

10 **TWELFTH CAUSE OF ACTION**

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

12 **(Against All Defendants)**

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

15 127. Plaintiff and Employees are aggrieved employees as defined under Labor Code §
16 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
17 alleged violators, Defendants.

18 128. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'
19 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the
20 penalty provisions, without limitation, based on the following California Labor Code sections:
21 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174,
22 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802.

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

25 130. Employees also seek any and all penalties and remedies set forth in Labor Code §
26 558, which states:

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28 ///

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

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

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

22 131. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
23 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
24 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
25 for each violation in a subsequent citation, for which the employer fails to provide the employee a
26 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the
27 extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

28 132. Plaintiff has exhausted her administrative remedy by sending a certified letter to the
LWDA and Defendants postmarked on March 11, 2024. The LWDA has not provided notice of its
intent to investigate the alleged violations within 65 calendar days of the postmark date of the
letters.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work

1 performed by Employees and unpaid overtime compensation from at least four (4) years prior to the
2 filing of this action, as may be proven;

3 3. For liquidated damages in the amount equal to the unpaid minimum wage and interest
4 thereon, from at least four (4) years prior to the filing of this action, according to proof;

5 4. For compensatory damages in the amount of all unpaid wages, including overtime
6 and double-time pay, as may be proven;

7 5. For penalties pursuant to Labor Code § 227.3, as may be proven;

8 6. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;

9 7. For compensatory damages in the amount of the hourly wage made by Employees
10 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
11 years prior to the filing of this action, as may be proven;

12 8. For compensatory damages in the amount of the hourly wage made by Employees
13 for each day requisite rest breaks were not provided or were deficiently provided where no premium
14 pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;

15 9. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

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

17 11. For penalties pursuant to Labor Code § 1174.5, as may be proven;

18 12. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired
19 in an amount equal to their daily wage times thirty (30) days, as may be proven;

20 13. For damages and restitution for failure to reimburse all reasonable and necessary
21 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

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

23 15. For restitution for unfair competition pursuant to Business & Professions Code
24 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

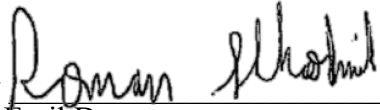
25 16. For an order enjoining Defendants and their agents, servants, and employees, and all
26 persons acting under, in concert with, or for them, from acting in derogation of any rights or duties
27 adumbrated in this Complaint;

28 17. For other wages and penalties under the Labor Code as may be proven;

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

6
7 DATED: May 15, 2024

D.LAW, INC.

8
9 By 
10 Emil Davtyan
11 David Yeremian
12 Roman Shkodnik
13 Attorneys for Plaintiff
14 AMANDA TALBOT
15 and the putative class
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DATED: May 15, 2024

By 
Emil Davtyan
David Yermian
Roman Shkodnik
Attorneys for Plaintiff
AMANDA TALBOT
and the putative class

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

Barbara A. Cotter
bcotter@cookbrown.com
COOK BROWN LLP
 2407 J Street, Second Floor
 Sacramento, CA 95816

[X] (ONLY BY ELECTRONIC TRANSMISSION) I electronically served the foregoing document in PDF format. I caused a true copy of the foregoing document(s) listed above to be served by electronic email transmission at the time shown on each transmission, to each interested party at the email address(es) shown above. Each transmission was reported as complete and without error.

[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.

Natalia Bermudes
Natalia Bermudes