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 on behalf of herself and others similarly situated and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

MARITZA FERNANDEZ, on behalf of herself
 and others similarly situated and current and
 former aggrieved employees,

Plaintiff,

vs.

ESPERANZA COMMUNITY HOUSING
 CORPORATION, a California non-profit
 corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No.: 24STCV05954

CLASS ACTION

**PLAINTIFF MARITZA FERNANDEZ’S
 FIRST AMENDED COMPLAINT FOR
 DAMAGES AND RESTITUTION AND
 FOR:**

- 1. FAILURE TO PAY WAGES FOR ALL TIME WORKED AT MINIMUM WAGE IN VIOLATION OF LABOR CODE SECTIONS 1194 AND 1197**
- 2. FAILURE TO PAY OVERTIME WAGES FOR DAILY OVERTIME WORKED IN VIOLATION OF LABOR CODE SECTIONS 510, 1194, AND 1198**
- 3. FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS IN VIOLATION OF LABOR CODE SECTIONS 512 AND 226.7**
- 4. FAILURE TO AUTHORIZE OR PERMIT REST PERIODS IN VIOLATION OF LABOR CODE SECTION 226.7**

5. **FAILURE TO PAY ALL ACCRUED AND VESTED VACATION/PTO WAGES IN VIOLATION OF LABOR CODE SECTION 227.3**
6. **FAILURE TO PROVIDE SICK PAY IN VIOLATION OF LABOR CODE SECTION 246**
7. **FAILURE TO TIMELY PAY EARNED WAGES DURING EMPLOYMENT IN VIOLATION OF LABOR CODE SECTION 204**
8. **FAILURE TO TIMELY PAY ALL EARNED WAGES AND FINAL PAYCHECKS DUE AT TIME OF SEPARATION OF EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**
9. **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226**
10. **UNFAIR BUSINESS PRACTICES, IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200, *et seq.***
11. **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (“PAGA”), LABOR CODE SECTION 2698, *et seq.***

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff MARITZA FERNANDEZ (“Plaintiff”), who alleges and complains against Defendants ESPERANZA COMMUNITY HOUSING CORPORATION, a California non-profit corporation (“Defendant ESPERANZA COMMUNITY HOUSING”), and DOES 1 to 100, inclusive (collectively “Defendants”) as follows:

INTRODUCTION

1. This is a wage and hour class action lawsuit and Private Attorneys' General Act of 2004, Lab. Code §2698, et seq. ("PAGA") representative action on behalf of Plaintiff and other current and former non-exempt employees of Defendants in California seeking within the applicable statute of limitations periods:

- (a) failure to pay wages for all hours worked at minimum wage;
- (b) failure to pay overtime wages for all overtime hours worked;
- (c) failure to authorize or permit all legally required and compliant meal periods and/or pay meal period premium wages;
- (d) failure to authorize or permit all legally required and compliant rest periods and/or pay rest period premium wages;
- (e) failure to pay accrued and vested vacation/PTO wages;
- (f) failure to pay sick pay;
- (g) statutory penalties for failure to timely pay earned wages during employment;
- (h) statutory waiting time penalties in the form of continuation wages for failure to timely pay employees all wages due upon separation of employment; and
- (i) statutory penalties for failure to provide accurate wage statements.

Based on these alleged violations, Plaintiff now brings this class action and representative action to recover unpaid wages, restitution, statutory penalties, injunctive relief and other equitable relief, reasonable attorney's fees pursuant to Labor Code §218.5, 226(e), 1194, costs, interest, liquidated damages, and civil penalties pursuant to Labor Code §2698 associated with Defendant's violations of the Labor Code brought on behalf of Plaintiff and others similarly situated and/or other aggrieved employees and the Labor Workforce Development Agency ("LWDA").

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction to hear this case because Plaintiff's and putative class members' claims for unpaid wages, actual damages, liquidated damages, restitution, and penalties sought by Plaintiff on behalf of herself and others similarly situated from Defendants exceeds the minimal jurisdictional limits of the Superior Court of the State of California.

3. Venue is proper in Los Angeles County pursuant to Code of Civil Procedure §§393(a), 395(a) and 395.5 in that liability arose there, because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices, transacts business, and/or has an agent therein.

4. Defendants operate throughout California; Defendants employed Plaintiff and putative class members in locations throughout California, including but not limited to Los Angeles County, at 3655 So. Gran Avenue, Suite 280, Los Angeles, California 90007; more than two-thirds of putative class members are California citizens; the principal violations of California law occurred in California; the conduct of Defendants forms a significant basis for Plaintiff's and putative class members' claims; and Plaintiff and putative class members seek significant relief from Defendants.

PAGA ALLEGATIONS

5. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

6. At all times herein set forth, PAGA provides that any provision of law under the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to procedures outlined in Labor Code §2699.3.

7. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved employee,” who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

8. Plaintiff was employed by Defendants and the alleged violation was committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and the other employees are “aggrieved employees” as defined by Labor Code §2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

9. Pursuant to Labor Code §2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been

met:

- a. The aggrieved employee shall give written notice by online submission (hereinafter “Employee’s Notice”) to the Labor & Workforce Development Agency (hereinafter “LWDA”) and by U.S. Certified Mail to the employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.
- b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to Labor Code §2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

10. On March 8, 2024, Plaintiff provided written notice by online submission to the LWDA and by U.S. Certified Mail to Defendant ESPERANZA COMMUNITY HOUSING of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff has not received an LWDA Notice within sixty-five (65) calendar days of the date of Plaintiff’s notice.

11. Therefore, Plaintiff has satisfied the administrative prerequisites under Labor Code §2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations of Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 245-248.5, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198.

PARTIES

12. Plaintiff brings this action on behalf of herself and other members of the general public similarly-situated. The named Plaintiff and the class of persons on whose behalf this action is filed are current, former and/or future employees of Defendants who work as hourly non-exempt

1 employees. At all times mentioned herein, the currently named Plaintiff is and was a resident of
2 California and were employed by Defendants within the four years prior to the filing of the Complaint.

3 13. Defendants employed Plaintiff as an hourly non-exempt employee from in or around
4 2021 to on or about September 16, 2023.

5 14. Plaintiff is informed and believes, and on that basis alleges that Defendants employed
6 Plaintiff and other hourly non-exempt employees throughout the State of California and therefore its
7 conduct forms a significant basis of the claims asserted in this matter.

8 15. Plaintiff is informed and believes and thereon alleges that Defendant ESPERANZA
9 COMMUNITY HOUSING and DOES 1-50 are authorized to do business within the State of
10 California and are doing business in the State of California and/or that Defendants DOES 1-25 are,
11 and at all times relevant hereto were persons acting on behalf of Defendants in the establishment of,
12 or ratification of, the aforementioned illegal wage and hour practices or policies. Defendant
13 ESPERANZA COMMUNITY HOUSING and DOES 1-25 operate in Los Angeles County and
14 employed Plaintiff and other putative class members in Los Angeles County at its business located at
15 3655 South Grand Avenue, Suite 280, Los Angeles, California 90007.

16 16. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51-75
17 are corporations, or are other business entities or organizations of a nature unknown to Plaintiff that
18 employed Plaintiff and aggrieved California non-exempt employees, permitted Plaintiff and
19 aggrieved employees to work, and exercised control over the wages, hours and working conditions
20 of employment of Plaintiff and aggrieved employees.

21 17. Plaintiff is informed and believes and thereon alleges that Defendants DOES 76-100
22 are individuals unknown to Plaintiff. Each individual Defendant is sued individually in his or her
23 capacity as an agent, shareholder, owner, representative, manager, supervisor, independent contractor
24 and/or employee of each Defendant and participated in the establishment of, or ratification of, the
25 aforementioned illegal wage and hour practices or policies.

26 18. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
27 sues said Defendants by said fictitious names, and will amend this Complaint when the true names
28 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted

1 by law or by the Court. Plaintiff is informed and believes that each of the fictitiously named
2 Defendants is in some manner responsible for the events and allegations set forth in this Complaint.

3 19. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each
4 Defendant was an employer, was the principal, agent, partner, joint venturer, officer, director,
5 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
6 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
7 the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all
8 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
9 Complaint. Plaintiff is further informed and believes and thereon alleges that each Defendant acted
10 pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each
11 Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled,
12 aided and abetted the conduct of all other defendants. As used in this Complaint, “Defendants” means
13 “Defendants and each of them,” and refers to the Defendants named in the particular cause of action
14 in which the word appears and includes Defendant ESPERANZA COMMUNITY HOUSING and
15 DOES 1 to 100, inclusive.

16 20. At all times mentioned herein, each Defendant was the co-conspirator, agent, servant,
17 employee, and/or joint venturer of each of the other Defendants and was acting within the course and
18 scope of said conspiracy, agency, employment, and/or joint venture and with the permission and
19 consent of each of the other Defendants.

20 21. Plaintiff makes the allegations in this Complaint without any admission that, as to any
21 particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff
22 reserves all of Plaintiff rights to plead in the alternative.

23 **DESCRIPTION OF ILLEGAL PAY PRACTICES**

24 22. Pursuant to Industrial Welfare Commission (“IWC”) Wage Order 4 (“Wage Order”),
25 codified at California Code of Regulations title 8, §11010, Defendants are employers of Plaintiff
26 within the meaning of Wage Order 4 and §18 of the Labor Code. Therefore, each of these Defendants
27 is jointly and severally liable for the wrongs complained of herein in violation of the Wage Order and
28 the Labor Code.

1 **23. Failure to Pay Wages for All Hours Worked at the Legal Minimum Wage:**
2 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees.
3 In California, an employer is required to pay hourly employees for all “hours worked” at least the
4 minimum wage rate of pay which includes all time that an employee is under the control of the
5 employer and all time the employee is suffered and permitted to work as established by the Industrial
6 Welfare Commission (“IWC”) and the Wage Orders. This includes the time an employee spends,
7 either directly or indirectly, performing services which inure to the benefit of the employer.

8 **24.** Plaintiff and similarly situated hourly non-exempt employees worked more minutes
9 per shift than Defendants credited them with having worked. Defendants failed to pay Plaintiff and
10 similarly situated employees all wages at the applicable overtime wage for all hours worked due to
11 Defendants’ policies, practices, and/or procedures including, but not limited to:

- 12 a. Defendants paid Plaintiff and other non-exempt employees similarly situated for their
13 scheduled hours instead of properly keeping track of their time. As a result, Defendants
14 failed to properly track the actual hours Plaintiff and other non-exempt employees
15 worked. Otherwise, Defendants unlawfully “rounded down” or “shaved” Plaintiff and
16 other non-exempt employees’ hours to the nearest quarter of an hour, and failed to
17 properly compensate them for time spent working in a given shift.
- 18 b. Defendants maintained a policy, practice, and/or procedure whereby Defendants
19 required Plaintiff and other non-exempt employees similarly situated to complete other
20 off-the-clock work tasks after clocking out for the end of their shifts and/or during
21 uncompensated meal periods, resulting in off-the-clock work and the underpayment
22 of minimum and overtime wages owed to Plaintiff and other non-exempt employees
23 similarly situated.

24 **25.** Therefore, Defendants suffered, permitted, and required their hourly non-exempt
25 employees to be subject to Defendants’ control without paying wages for that time. This resulted in
26 Plaintiff and similarly situated employees working time for which they were not compensated any
27 wages, in violation of Labor Code §§1194, 1197, and Wage Order 4.
28

1 **26. Failure to Pay Overtime Wages Due to Rounding Down Hours Worked to the**
2 **Nearest Quarter Hour.** Defendants employed many of their employees, including Plaintiff, as non-
3 exempt, hourly employees. In California, an employer is required to pay hourly employees for all
4 “hours worked,” which includes all time that an employee is under control of the employer and all
5 time the employee is suffered and permitted to work. This includes the time an employee spends,
6 either directly or indirectly, performing services that inure to the benefit of the employer.

7 **27.** Labor Code §§510 and 1194 require an employer to compensate employees a higher
8 rate of pay for hours worked in excess of 8 hours in a workday, 40 hours in a workweek, and on any
9 seventh consecutive day of work in a workweek:

10 Any work in excess of eight hours in one workday and any work in excess of 40 hours
11 in any one workweek and the first eight hours worked on the seventh day of work in
12 any one workweek shall be compensated at the rate of no less than one and one-half
13 times the regular rate of pay for an employee. Any work in excess of 12 hours in one
14 day shall be compensated at the rate of no less than twice the regular rate of pay for an
 employee. In addition, any work in excess of eight hours on any seventh day of a
 workweek shall be compensated at the rate of no less than twice the regular rate of pay
 of an employee.

15 (Lab. Code §510).

16 **28.** In this case, Defendants “rounded” down or “shaved” Plaintiff and similarly situated
17 employees’ total daily hours worked to the nearest quarter of an hour at the clock-in and clock-out
18 times, to the benefit of Defendants. This occurred on days where Plaintiff and similarly situated
19 employees worked at least 8 hours or in workweeks where Plaintiff and similarly situated employees
20 worked at least 40 hours. This resulted in Defendants failing to pay Plaintiff and similarly situated
21 hourly non-exempt employees at their overtime rate of pay for this time, but was not paid any wages
22 in violation of Labor Code §§510, 1194, and Wage Order 4, §3.

23 **29. Failure to Pay Wages for Overtime Hours Worked at the Overtime Rate of Pay:**
24 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees.
25 In California, an employer is required to pay hourly employees for all “hours worked,” which includes
26 all time that an employee is under the control of the employer and all time the employee is suffered
27 or permitted to work. This includes the time an employee spends, either directly or indirectly,
28 performing services which inure to the benefit of the employer.

1 30. Labor Code §§510 and 1194 and Wage Order 16 require an employer to compensate
2 employees at a higher rate of pay for hours worked in excess of eight (8) hours in a workday, more
3 than forty (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

4 Any work in excess of eight hours in one workday and any work in excess of 40 hours
5 in any one workweek and the first eight hours worked on the seventh day of work in
6 any one workweek shall be compensated at the rate of no less than one and one-half
7 times the regular rate of pay for an employee. Any work in excess of 12 hours in one
8 day shall be compensated at the rate of no less than twice the regular rate of pay for
9 an employee. In addition, any work in excess of eight hours on any seventh day of a
10 workweek shall be compensated at the rate of no less than twice the regular rate of pay
11 of an employee.

12 Labor Code §510; Wage Order 4, §3.

13 30. Defendants failed to pay Plaintiff and similarly situated employees all wages at the applicable
14 minimum wage for all hours worked due to Defendants' policies, practices, and/or procedures
15 including, but not limited to:

16 a. Defendants maintained a policy, practice, and/or procedure whereby rather than paying
17 Plaintiff and other non-exempt employees similarly situated overtime wages for overtime
18 hours worked at the proper overtime rate, it paid Plaintiff and other non-exempt employees
19 similarly situated straight wages. As a result, Defendants failed to properly pay Plaintiff and
20 other non-exempt employees similarly situated their proper overtime wages.

21 b. Defendants maintained a policy, practice, and/or procedure whereby Defendants required
22 Plaintiff and other non-exempt employees similarly situated to complete other off-the-clock
23 work tasks after clocking out for the end of their shifts and/or during uncompensated meal
24 periods, resulting in off-the-clock work and the underpayment of minimum and overtime
25 wages owed to Plaintiff and other non-exempt employees similarly situated.

26 32. To the extent Plaintiff and similarly situated employees had already worked 8 hours
27 in the workday and/or during workweeks Plaintiff and similarly situated employees had already
28 worked 40 hours in a workweek, the employees should have been paid overtime for this unpaid time.
This resulted in hourly non-exempt employees working time which should have been paid at the legal
overtime rate but was not paid any wages in violation of Labor Code §§510, 1194, and Wage Order
4, §3.

1 33. Defendants' foregoing policy, practice, and/or procedure resulted in Defendants
2 failing to pay Plaintiffs and similarly situated employees for all overtime hours worked, in violation
3 of Labor Code §§510, 1194, 1198, and the Wage Order.

4 34. **Failure to Pay Hourly Non-Exempt Employees Wages to Compensate Them for**
5 **Workdays Defendants Failed to Provide Required Meal Periods:** California law requires an
6 employer to authorize or permit an employee an uninterrupted meal period of no less than 30-minutes
7 in which the employee is relieved of all duties and the employer relinquishes control over the
8 employee's activities prior to the employee's sixth hour of work. Cal. Lab. Code §§226.7, 512; Wage
9 Order 9-2001, 11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer
10 may not employ an employee for a work period of more than 10 hours per day without providing the
11 employee with a second such meal period of not less than 30 minutes prior to the start of the eleventh
12 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
13 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
14 period is only permitted when: (1) the nature of the work prevents an employee from being relieved
15 of all duty; and (2) the parties have a written agreement agreeing to on duty meal periods. If an
16 employer fails to provide an employee a meal period in accordance with the law, the employer must
17 pay the employee one hour of pay at the employee's regular rate of pay for each workday that a legally
18 required meal period was not timely provided or was not duty-free. *Id.*

19 35. During the four years prior to the filing of the complaint, Plaintiff and similarly
20 situated employees regularly worked shifts of more than 5 hours in length. Nevertheless, Plaintiff and
21 similarly situated employees were not given an uninterrupted 30-minute meal break for every five
22 hours of work because Defendants' systematic company policy pressured and/or required employees
23 to work without receiving meal periods, or the meal breaks were interrupted, untimely, taken while
24 working, and/or were shorter than 30 minutes. Nevertheless, Defendants automatically deducted 30
25 minutes from Plaintiff's and similarly situated employees' daily hours worked and attributed that time
26 to a first meal period.

27 36. At times, Plaintiff and California non-exempt employees would work in excess of 10
28 hours which would entitled them to a second meal period before the 10th hour of work. Defendants

1 did not provide Plaintiff and California non-exempt employees with a second meal period when they
2 worked in excess of 10 hours. Defendants did not have a procedure in place to pay Plaintiff and
3 California non-exempt employees a premium wage for their missed meal periods when they did not
4 receive a second meal period. Accordingly, Defendants did not pay Plaintiff and California non-
5 exempt employees a premium wage when they did not receive a second meal period.

6 37. Defendants also failed to pay Plaintiff and similarly situated employees one hour of
7 pay at their regular rate of pay for each workday Plaintiff and similarly situated employees did not
8 receive all legally compliant meal periods. Defendants lacked a policy and procedure for
9 compensating Plaintiff and similarly situated employees with premium wages when they did not
10 receive all legally required meal periods in a legally compliant manner.

11 38. These practices and procedures resulted in Plaintiff and all other similarly situated
12 employees not receiving wages to compensate them for workdays which Defendants did not provide
13 them with legally compliant meal periods in compliance with California law.

14 39. **Failure to Pay Hourly Employees Wages to Compensate Them for Workdays**
15 **Defendants Failed to Provide Required Rest Periods:** Defendants often employed hourly
16 employees, including the named Plaintiff and all others similarly-situated, for shifts at least three and
17 one-half (3.5) hours in length.

18 40. California law states that “[e]very employer shall authorize and permit all employees
19 to take rest periods, which insofar as practicable shall be in the middle of each work period. The
20 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
21 minutes net rest time per four (4) hours or major fraction thereof. ... If an employer fails to provide
22 an employee a rest period in accordance with the applicable provisions of this order, the employer
23 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
24 workday that the rest period is not provided.” (Wage Order 4, §12; see Lab. Code §226.7). Under
25 California law, “[e]mployees are entitled to 10 minutes’ rest for shifts from three and one-half to six
26 hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of
27 more than 10 hours up to 14 hours, and so on.” (*Brinker v. Superior Court* (2012) 53 Cal.4th 1004,
28 1029; Lab. Code §226.7; Wage Order 4, §12). Rest periods must be in the middle of each work period.

1 (Wage Order 4, §12). If an employer fails to provide an employee a timely and legally compliant rest
2 period, the employer must pay the employee one hour of pay at the employee's regular rate of
3 compensation for each work day that a legally required meal period was not provided or was not duty
4 free. (*Id.*)

5 41. Despite that California law requires employers to provide employees with one 10
6 minute rest break when an employee's work shift is in excess of 3.5 hours, a second 10 minute rest
7 break when a shift is in excess of 6 hours, a third 10-minute rest break when a shift is in excess of 10
8 hours, Defendants regularly failed to do so. As a result, Plaintiff and similarly situated non-exempt,
9 employees did not receive legally compliant rest periods as they were untimely, on-duty, or were not
10 taken at all.

11 42. Defendants also failed to pay employees one hour of pay at their regular rate of pay
12 for each workday Plaintiff and similarly situated employees did not receive all timely and legally
13 compliant rest periods.

14 43. This practice resulted in Plaintiff and all other similarly situated California non-
15 exempt employees not receiving wages to compensate them for workdays which Defendants did not
16 provide them with rest periods in compliance with California law.

17 44. **Failure to Pay Accrued and Vested Vacation Wages:** Defendants had a policy
18 and/or procedure of providing its employees with paid vacation time and/or personal time off
19 ("Vacation/PTO").

20 45. Vacation/PTO wages are deferred wages that vest once accrued. Labor Code §227.3
21 provides that an employer must pay its employees all unused vested vacation/PTO at the time of
22 termination at the employees' final rate of pay.

23 46. Defendants had a vacation policy in which Plaintiff and other similarly situated
24 employees accrued vacation/PTO wages.

25 47. Defendants terminated Plaintiff and other similarly situated employees without paying
26 them the full amount of their earned vacation/PTO wages, in violation of California law, and
27 employed policies and procedures which ensured Plaintiff and those similarly situated would not
28 receive their accrued and vested vacation/PTO wages upon termination.

1 48. **Failure to Pay Sick Pay at the Proper Rate:** Defendants failure to provide sick pay
2 to Plaintiff and similarly situated employees at the correct rate. Plaintiff received compensation in
3 addition to hourly wages, but those additional amounts were not included when calculating sick pay
4 wages. Instead, Defendants paid Plaintiff and similarly situated employees at their base hourly rate
5 of pay.

6 49. **Failure to Timely Pay Earned Wages During Employment:** In California, wages
7 must be paid at least twice during each calendar month on days designated in advance by the employer
8 as regular paydays, subject to some exceptions. Labor Code §204(a). Wages earned between the 1st
9 and 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of
10 that month and wages earned between the 16th and the last day, inclusive, of any calendar month
11 must be paid between the 1st and 10th day of the following month. *Id.* Other payroll periods such as
12 those that are weekly, biweekly, or semimonthly, must be paid within seven (7) calendar days
13 following the close of the payroll period in which wages were earned. Labor Code §204(d).

14 50. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to
15 timely pay Plaintiff's and similarly situated employees' earned wages (including minimum wages,
16 overtime wages, meal period premium wages, rest period premium wages, vacation/PTO pay, sick
17 pay, and reimbursement pay), in violation of Labor Code §204.

18 51. Defendants' aforementioned policies, practices, and/or procedures resulted in their
19 failure to pay Plaintiff and similarly situated employees their earned wages within the applicable time
20 frames outlined in Labor Code §204.

21 52. **Failure to Timely Pay All Wages Due at the Time of Termination/Resignation:**
22 An employer is required to pay all unpaid wages timely after an employee's employment ends. The
23 wages are due immediately upon termination (Labor Code §201) or within 72 hours of resignation
24 (Labor Code §202).

25 53. As a result of the aforementioned violations of the Labor Code, Plaintiff alleges that
26 he, and other similarly situated employees, were not paid their final wages in a timely manner upon
27 separation of employment, whether voluntary or involuntary, as required by Labor Code §201, 202,
28 and 203.

1 54. **Failure to Provide Accurate Wage Statements:** Labor Code §226(a) provides (inter
2 alia) that, upon paying an employee his or her wages, the employer must “furnish each of his or her
3 employees ... an itemized statement in writing showing: (1) gross wages earned, (2) total hours
4 worked by the employee, except for any employee whose compensation is solely based on a salary
5 and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable
6 order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any
7 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that
8 all deductions made on written orders of the employee may be aggregated and shown as one item, (5)
9 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
10 name of the employee and his or her social security number, (8) the name and address of the legal
11 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
12 corresponding number of hours worked at each hourly rate by the employee.”

13 55. Defendants failed to provide accurate and complete wage statements to Plaintiff and
14 similarly situated employees. Because Defendants provided to employees wage statements which
15 were inadequate as a result of the aforementioned conduct, Plaintiff and similarly situated employees
16 wage statements inaccurately stated: the gross wages earned, total hours worked by the employee, the
17 net wages earned, and applicable hourly rates in effect in a pay period with corresponding number of
18 hours worked.

19 56. Defendants applied these policies and procedures to Plaintiff and other similarly
20 situated employees which resulted in Defendants failing to provide complete and accurate wage
21 statements to non-exempt employees in compliance with Labor Code §226 (a).

22 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

23 57. Plaintiff brings this action on behalf of herself, on behalf of all others similarly
24 situated, and on behalf of the General Public, and as a member of a Class defined as follows:

25 A. **Minimum Wage Class:** All current and former hourly non-exempt employees
26 employed by Defendants in California at any time within the four years prior to the filing of the initial
27 Complaint in this action and through the date notice is mailed to a certified class who were not paid
28 at least at minimum wage for all time they were subject to Defendants’ control.

1 B. **Overtime Class:** All current and former hourly non-exempt employees
2 employed by Defendants in California at any time within the four years prior to the filing of the initial
3 Complaint in this action and through the date notice is mailed to a certified class who worked more
4 than eight hours in a in a workday or 40 hours in a workweek and to whom Defendants did not pay
5 all overtime wages owed.

6 C. **Meal Period Class:** All current and former hourly non-exempt employees
7 employed by Defendants in California at any time within the four years prior to the filing of the initial
8 Complaint in this action and through the date notice is mailed to a certified class who worked more
9 than 5 hours during a workday and did not receive wages to compensate them for missed meal periods,
10 late meal periods, interrupted meal periods, meal periods taken onsite and/or short meal periods,
11 and/or take a second meal period when they worked shifts over 10 hours.

12 D. **Rest Period Class:** All current and former hourly non-exempt employees
13 employed by Defendants in California at any time within the four years prior to the filing of the initial
14 Complaint in this action and through the date notice is mailed to a certified class who worked at least
15 three and one-half (3.5) or more hours in a day who did not receive required rest periods of ten net
16 minutes rest time for every four hours worked between three and one-half and six hours, six and ten
17 hours, or ten and fourteen hours.

18 E. **Vacation Pay Class:** All current and former non-exempt employees employed
19 by Defendants in California at any time within the four (4) years prior to the filing of the initial
20 complaint in this action and through the date notice is mailed to a certified class who accrued vacation
21 time/personal time off, yet Defendants did not pay all wages due for vested vacation time/personal
22 time off upon separation of employment.

23 F. **Sick Pay Class:** All current and former non-exempt employees employed by
24 Defendants in California as direct employees as well as temporary employees employed through
25 temporary employment agencies at any time from four (4) years prior to the filing of the initial
26 Complaint in this matter through the date notice is mailed to a certified class who were paid sick pay
27 in a period in which their hours were rounded and/or shaved-off, or sick pay not properly calculated.
28

1 G. **Pay Day Class:** All current and former hourly non-exempt employees
2 employed by Defendants in California at any time from four (4) years prior to the filing of the initial
3 Complaint in this action through the date notice is mailed to a certified class who were not timely
4 paid earned wages during their employment.

5 H. **Waiting Time Class:** All current and former hourly non-exempt employees
6 employed by Defendants in California at any time within the three years prior to the filing of the
7 initial Complaint in this action and through the date notice is mailed to a certified class who did not
8 receive payment of all unpaid wages upon separation of employment within the statutory time period.

9 I. **Wage Statement Class:** All current and former non-exempt employees
10 employed by Defendants in California at any time within the one year prior to the filing of the initial
11 complaint in this action and through the date notice is mailed to a certified class who received
12 inaccurate or incomplete wage statements.

13 J. **California Class:** All aforementioned classes are here collectively referred to
14 as the “California Class.”

15 58. There is a well-defined community of interest in the litigation and the classes are
16 ascertainable:

17 A. **Numerosity:** While the exact number of class members in each class is
18 unknown to Plaintiff at this time, the Plaintiff classes are so numerous that the individual joinder of
19 all members is impractical under the circumstances of this case.

20 B. **Common Questions Predominate:** Common questions of law and fact exist
21 as to all members of the Plaintiff classes and predominate over any questions that affect only
22 individual members of each class. The common questions of law and fact include, but are not limited
23 to:

24 i. Whether Defendants violated Labor Code §§1194 and 1197 by not
25 paying employees’ wages at a minimum wage rate for all time that the Minimum Wage Class
26 Members were subject to Defendants’ control but were not paid;

27 ii. Whether Defendants violated Labor Code §§510 and 1194 by not
28 paying employees’ wages at an overtime wage rate for all overtime hours that the Overtime Class

1 Members were subject to Defendants' control but were not paid.

2 iii. Whether Defendants violated Labor Code §§512 and 226.7, as well as
3 the applicable Wage Order, by employing Meal Period Class Members without providing all their
4 required meal periods or paying meal period premium wages;

5 iv. Whether Defendants violated the Wage Order and Labor Code §226.7
6 and the applicable Wage Order by employing Rest Period Class Members without providing all their
7 required rest periods or paying rest period premium wages;

8 v. Whether Defendants violated Labor Code §227.3 by failing to pay the
9 Vacation Pay Class Members all vacation time/personal time off wages due to them upon termination;

10 vi. Whether Defendants failed to pay sick pay to the Sick Pay Class at the
11 correct rate;

12 vii. Whether Defendants violated Labor Code §204 by employing Pay Day
13 Class Members without timely paying them all earned wages during their employment;

14 viii. Whether Defendants failed to provide the Waiting Time Class
15 Members with all of their earned wages upon separation of employment within the statutory time
16 period;

17 ix. Whether Defendants unlawfully failed to furnish the Wage Statement
18 Class with proper accurate itemized wage statements;

19 x. Whether Defendants committed unlawful business acts or practice
20 within the meaning of Business and Professions Code §17200 *et seq.*;

21 xi. Whether California Class Members are entitled to unpaid wages,
22 penalties and other relief pursuant to their claims;

23 xii. Whether, as a consequence of Defendants' unlawful conduct, the
24 California Class Members are entitled to restitution, and/or equitable relief; and

25 xiii. Whether Defendants' affirmative defenses, if any, raise any common
26 issues of law or fact as to Plaintiff and as to the California Class Members as a whole.

27 C. **Typicality:** Plaintiff's claims are typical of the claims of the class members in
28 each of the classes. Plaintiff and the members of the Minimum Wage Class sustained damages arising

1 out of Defendants' failure to pay wages at least at minimum wage for all time the employees were
2 subject to Defendants' control. Plaintiff and the members of the Overtime Wage Class sustained
3 damages arising out of Defendants' failure to pay the overtime wages for overtime hours worked.
4 Plaintiff and the members of the Meal Period Class sustained damages arising out of Defendants'
5 failure to provide employees all legally required meal periods and failure to pay meal period premium
6 wages as compensation. Plaintiff and the members of the Rest Period Class sustained damages arising
7 out of Defendants' failure to provide employees all legally required rest periods and failure to pay
8 rest period premium wages as compensation. Plaintiff and the members of the Vacation Pay Class
9 sustained damages arising out of Defendants' failure to pay all accrued and vested vacation/PTO
10 wages upon separation of employment. Plaintiff. Plaintiff and members of the Sick Pay Class
11 sustained damages arising out of Defendants' failure to properly calculate and pay sick pay. Plaintiff
12 and members of the Pay Day Class sustained damages arising out of Defendants' failure to timely
13 pay them all wages earned during their employment in compliance with Labor Code §204. Plaintiff
14 and the members of the Waiting Time Class sustained damages arising out of Defendants' failure to
15 provide all unpaid yet earned wages due upon separation of employment within the statutory time
16 limit. Plaintiff and the members of the Wage Statement Class sustained damages arising out of
17 Defendants' failure to furnish them with accurate and/or complete itemized wage statements in
18 compliance with Labor Code §226.

19 **D. Adequacy of Representation:** Plaintiff will fairly and adequately protect the
20 interests of the members of each class. Plaintiff has no interest that is adverse to the interests of the
21 other class members.

22 **E. Superiority:** A class action is superior to other available means for the fair
23 and efficient adjudication of this controversy. Because individual joinder of all members of each class
24 is impractical, class action treatment will permit a large number of similarly situated persons to
25 prosecute their common claims in a single forum simultaneously, efficiently, and without the
26 unnecessary duplication of effort and expense that numerous individual actions would engender. The
27 expenses and burdens of individual litigation would make it difficult or impossible for individual
28 members of each class to redress the wrongs done to them, while important public interests will be

1 served by addressing the matter as a class action. The cost to and burden on the court system of
2 adjudication of individualized litigation would be substantial, and substantially more than the costs
3 and burdens of a class action. Individualized litigation would also present the potential for inconsistent
4 or contradictory judgments.

5 F. **Public Policy Consideration:** Employers throughout the state violate wage
6 and hour laws. Current employees often are afraid to assert their rights out of fear of direct or indirect
7 retaliation. Former employees fear bringing actions because they perceive their former employers can
8 blacklist them in their future endeavors with negative references and by other means. Class actions
9 provide the class members who are not named in the Complaint with a type of anonymity that allows
10 for vindication of their rights.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY WAGES FOR ALL HOURS OF WORK AT THE LEGAL MINIMUM**

13 **WAGE RATE IN VIOLATION OF LABOR CODE SECTIONS 1194 AND 1197**

14 **(By Plaintiff and the Minimum Wage Class As Against All Defendants and Doe Defendants)**

15 59. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
16 by reference.

17 60. At all times relevant to this Complaint, Plaintiff and the members of the Minimum
18 Wage Class were hourly non-exempt employees of Defendants.

19 61. Pursuant to Labor Code §§1194, 1197, and Wage Orders, Plaintiff and the Minimum
20 Wage Class are entitled to receive wages for all hours worked, i.e., all time subject to Defendants'
21 control, and those wages must be paid at least at the minimum wage rate in effect during the time the
22 Minimum Wage Class members earned the wages.

23 62. Defendants' payroll policies and procedures required members of the Minimum Wage
24 Class to be engaged, suffered, or permitted to work without being paid wages for all of the time in
25 which they were subject to Defendants' control.

26 63. Specifically, Defendants paid Plaintiff and Minimum Wage Class Members for their
27 scheduled hours instead of properly keeping track of their time. As a result, Defendants failed to
28 properly track the actual hours Plaintiff and Minimum Wage Class Members worked. Otherwise,

Defendants unlawfully “rounded down” or “shaved” Plaintiff and Minimum Wage Class Members’ hours to the nearest quarter of an hour, and failed to properly compensate them for time spent working in a given shift.

64. Defendants further maintained a policy, practice, and/or procedure whereby Defendants required Plaintiff and Minimum Wage Class Members to complete other off-the-clock work tasks after clocking out for the end of their shifts and/or during uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum and overtime wages owed to Plaintiff and Minimum Wage Class Members.

65. In addition, Defendants employed a policy, practice, and/or procedure whereby they automatically deducted 30 minutes from Plaintiff and Minimum Wage Class Members hours worked and attributed that time to a first meal period, even though Defendants routinely provided Plaintiff and Minimum Wage Class Members meal periods of less than the 30 minutes. The 30-minute automatic deduction from Plaintiff’s and Minimum Wage Class Members timecards resulted in hours worked during meal periods that were not properly reflected on their time sheets and therefore not compensated for in violation of Labor Code §§1194, 1197, and the Wage Order.

66. As a result of Defendants’ unlawful conduct, Plaintiff and members of the Minimum Wage Class have suffered damages in an amount subject to proof, to the extent that they were not paid wages at a minimum wage rate for all hours worked.

67. Pursuant to Labor Code §§1194 and 1194.2, Plaintiff and the Minimum Wage Class members are entitled to recover unpaid minimum wage, interest thereon, liquidated damages in the amount of their unpaid minimum wage, and attorneys’ fees and costs.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES FOR DAILY OVERTIME WORKED IN VIOLATION OF LABOR CODE SECTIONS 510, 1194 AND 1198

(By Plaintiff and the Overtime Class As Against All Defendants and Doe Defendants)

68. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

69. At times relevant to this Complaint, Plaintiff and the members of the Overtime Class

1 were hourly non-exempt employees of Defendants, covered by Labor Code §§510 and 1194 and the
2 Wage Order.

3 70. Pursuant to Labor Code §§510 and 1194 and the Wage Order, hourly non-exempt
4 employees are entitled to receive a higher rate of pay for all hours worked in excess of eight hours in
5 a workday and/or 40 hours in a workweek.

6 71. Labor Code §510 (a) states in relevant part:

7 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one
8 workday and any work in excess of 40 hours in any one workweek and the first eight
9 hours worked on the seventh day of work in any one workweek shall be compensated
10 at the rate of no less than one and one-half times the regular rate of pay for an employee.
11 Any work in excess of 12 hours in one day shall be compensated at the rate of no less
12 than twice the regular rate of pay for an employee. In addition, any work in excess of
eight hours on any seventh day of a workweek shall be compensated at the rate of no
less than twice the regular rate of pay of an employee. Nothing in this section requires
an employer to combine more than one rate of overtime compensation in order to
calculate the amount to be paid to an employee for any hour of overtime work.

13 72. Further, Labor Code §1198 provides,

14 The maximum hours of work and the standard conditions of labor fixed by the
15 commission shall be the maximum hours of work and the standard conditions of labor
for employees. The employment of any employee for longer hours than those fixed by
the order or under conditions of labor prohibited by the order is unlawful.

16 73. Despite that California law requires employers to pay employees a higher rate of pay
17 for all hours worked more than eight hours in a workday, Defendants failed to pay Plaintiff and
18 Overtime Class Members overtime wages due them for their daily overtime hours worked.

19 74. Defendants "rounded" down or "shaved" Plaintiff and Overtime Class Members' total
20 daily hours worked to the nearest quarter of an hour at the clock-in and clock-out times, to the benefit
21 of Defendants. This occurred on days where Plaintiff and Overtime Class Members worked at least 8
22 hours or in workweeks where Plaintiff and Overtime Class Members worked at least 40 hours. This
23 resulted in Defendants failing to pay Plaintiff and Overtime Class Members at their overtime rate of
24 pay for this time.

25 75. Further, Defendants maintained a policy, practice, and/or procedure whereby
26 Defendants required Plaintiff and Overtime Class Members to complete other off-the-clock work
27 tasks after clocking out for the end of their shifts and/or during uncompensated meal periods, resulting
28 in off-the-clock work and the underpayment of minimum and overtime wages owed to Plaintiff and

Overtime Class Members.

76. In addition, Defendants employed a policy, practice, and/or procedure whereby they automatically deducted 30 minutes from Plaintiff and Overtime Class Members daily hours worked and attributed that time to a first meal period, even though Defendants routinely provided Plaintiff and Overtime Class Members meal periods of less than the 30 minutes. The 30-minute automatic deduction from Plaintiff's and Overtime Class Members timecards resulted in hours worked during meal periods that were not properly reflected on their time sheets. This occurred on days where Plaintiff and Overtime Class Members worked at least 8 hours or in workweeks where Plaintiff and Overtime Class Members worked at least 40 hours. This resulted in Defendants failing to pay Plaintiff and Overtime Class Members at their overtime rate of pay for this time in violation of Labor Code §§510, 1194, and the Wage Order.

77. Defendants further maintained a policy, practice, and/or procedure whereby rather than paying Plaintiff and Overtime Class Members overtime wages for overtime hours worked at the proper overtime rate, it paid Plaintiff and Overtime Class Members straight wages. As a result, Defendants failed to properly pay Plaintiff and Overtime Class Members their proper overtime wages.

78. Defendants additionally maintained a policy, practice, and/or procedure whereby Defendants required Plaintiff and Overtime Class Members to complete other off-the-clock work tasks after clocking out for the end of their shifts and/or during uncompensated meal periods, resulting in off-the-clock work and the underpayment of overtime wages owed to Plaintiff and Overtime Class Members.

79. As a result of Defendants' unlawful conduct, Plaintiff and members of the Overtime Class have suffered damages in an amount subject to proof, to the extent that they were not paid premium wages at an overtime rate of pay for all hours worked or at the proper overtime rate of pay.

80. Pursuant to Labor Code §1194, Plaintiff and the Overtime Class members are entitled to recover the full amount of their unpaid overtime wages, prejudgment interest and attorneys' fees and costs.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS IN VIOLATION OF**
3 **LABOR CODE SECTIONS 512 AND 226.7**

4 **(By Plaintiff and the Meal Period Class As Against All Defendants and Doe Defendants)**

5 81. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
6 by reference.

7 82. California law requires an employer to provide an employee an uninterrupted meal
8 period of no less than 30-minutes before the end of a five hour work period. (Lab. Code §512; Wage
9 Order 4 §11). An employer may not employ an employee for a work period of more than 10 hours
10 per day without providing the employee with a second meal period of not less than 30 minutes before
11 the end of a ten hour work period. (*Id.*) If the employee is not relieved of all duty during a meal period,
12 the meal period shall be considered an “on duty” meal period and counted as time worked. A paid
13 “on duty” meal period is only permitted when 1) the nature of the work prevents an employee from
14 being relieved of all duty and 2) the parties have a written agreement agreeing to on duty meal periods.
15 If the employee is not free to leave the work premises or worksite during the meal period, even if the
16 employee is relieved of all other duty during the meal period, the employee is subject to the
17 employer’s control and the meal period is counted as time worked. If an employer fails to provide an
18 employee a meal period in accordance with the law, the employer must pay the employee one hour
19 of pay at the employee’s regular rate of compensation for each work day that a legally required meal
20 period was not provided or was not duty free. (*Id.*)

21 83. Plaintiff and Meal Period Class Members would work on workdays in shifts long
22 enough to entitle them to meal periods under California law. Despite that California law requires
23 employers to provide employees with timely duty free meal periods when they have worked a
24 sufficient amount of hours, Defendants failed to provide employees a timely full thirty minute meal
25 period for each five hour period of work as required by law.

26 84. Defendants would automatically deduct 30 minutes from Plaintiff and Meal Period
27 Class Members’ daily hours worked even when Defendants failed to authorize or permit Plaintiff and
28 Meal Period Class Members to take a full 30-minute meal period or a meal period at all.

1 85. At times, Plaintiff and California non-exempt employees would work in excess of 10
2 hours which would entitled them to a second meal period before the 10th hour of work. Defendants
3 did not provide Plaintiff and California non-exempt employees with a second meal period when they
4 worked in excess of 10 hours. Defendants did not have a procedure in place to pay Plaintiff and
5 California non-exempt employees a premium wage for their missed meal periods when they did not
6 receive a second meal period. Accordingly, Defendants did not pay Plaintiff and California non-
7 exempt employees a premium wage when they did not receive a second meal period.

8 86. Defendants' policies and procedures resulted in Plaintiff and Meal Period Class
9 Members not receiving wages to compensate them for workdays which Defendants did not provide
10 them with legally compliant meal periods in compliance with California law.

11 87. Defendants' policies and procedures made it impossible for Plaintiff and other Meal
12 Period Class members from receiving all legally required and timely meal breaks or from Defendants
13 making such meal breaks available to Plaintiff and other Meal Period Class Members when they
14 worked a minimum of five hours in a work period.

15 88. Defendants' unlawful conduct alleged herein occurred in the course of employment of
16 Plaintiff and Meal Period Class Members and such conduct has continued through the filing of this
17 Complaint.

18 89. Defendants are liable to Plaintiff and members of the Meal Period Class for one hour
19 of additional pay at the regular rate of compensation for each workday that Defendants did not provide
20 all legally required and legally compliant meal periods.

21 90. Plaintiff, on behalf of herself and members of the Meal Period Class, seek damages
22 and all other relief allowable including a premium meal break wage for each workday the employees
23 were not provided with all legally required and legally compliant meal periods, pursuant to Labor
24 Code §226.7 and the Wage Order.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO AUTHORIZE OR PERMIT REST PERIODS IN VIOLATION OF**
3 **LABOR CODE SECTION 226.7**

4 **(By Plaintiff and the Rest Period Class As Against All Defendants and Doe Defendants)**

5 91. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
6 by reference.

7 92. At all times relevant to this Complaint, Plaintiff and the members of the Rest Period
8 Class were employees of Defendants, covered by Labor Code §226.7 and the Wage Order.

9 93. California law states that “[e]very employer shall authorize and permit all employees
10 to take rest periods, which insofar as practicable shall be in the middle of each work period. The
11 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
12 minutes net rest time per four (4) hours or major fraction thereof. ... If an employer fails to provide
13 an employee a rest period in accordance with the applicable provisions of this order, the employer
14 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
15 workday that the rest period is not provided.” (Wage Order 4, §12; see Lab. Code §226.7). Under
16 California law, “[e]mployees are entitled to 10 minutes’ rest for shifts from three and one-half to six
17 hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of
18 more than 10 hours up to 14 hours, and so on.” (*Brinker v. Superior Court* (2012) 53 Cal.4th 1004,
19 1029; Lab. Code §226.7; Wage Order 4, §12). Rest periods must be in the middle of each work period.
20 (Wage Order 4, §12). If an employer fails to provide an employee a timely and legally compliant rest
21 period, the employer must pay the employee one hour of pay at the employee’s regular rate of
22 compensation for each work day that a legally required meal period was not provided or was not duty
23 free. (*Id.*)

24 94. Defendants failed to provide Plaintiff and the Class Members all legally required rest
25 periods and failed to pay premium wages to Plaintiff and Rest Period Class Members to compensate
26 them for each workday they did not receive all legally required rest periods. Because Defendants
27 failed to afford employees rest periods in compliance with the law, Defendants are liable to Plaintiff
28 and the Rest Period Class for one hour of additional pay at the regular rate of compensation for each

workday that Defendants did not provide all rest periods in compliance with the law.

95. Pursuant to Labor Code §226.7 and the Wage Order, Plaintiff, on behalf of herself and on behalf of the Rest Period Class, seeks damages and all other relief allowable including rest period premium wages for each workday the employee was not provided with all legally compliant rest periods, plus prejudgment interest.

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL ACCRUED AND VESTED VACATION/PTO WAGES IN VIOLATION OF LABOR CODE SECTION 227.3

(By Plaintiff and the Vacation Pay Class As Against All Defendants and Doe Defendants)

96. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

97. At times relevant to this Complaint, Plaintiff and the members of the Vacation Pay Class were non-exempt employees of Defendants, covered by Labor Code §227.3.

98. Labor Code §227.3 states in relevant part

Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served....

99. Defendants employ policies which provide for vacation/PTO to Plaintiff and Vacation Pay Class.

100. Wages vest during the pay period in which they are earned. Plaintiff and members of the Vacation Pay Class earned vacation/PTO wages while employed by Defendants. Defendants terminated Vacation Pay Class Members and failed to pay all earned and vested vacation/PTO wages upon termination.

101. Defendants employed policies and procedures which ensured Plaintiff and members of the Vacation Pay Class would not receive their accrued and vested vacation/PTO wages upon termination.

102. Pursuant to Labor Code §227.3, Plaintiff and members of the Vacation Pay Class seek

1 their earned and vested vacation/PTO wages, plus interest thereon, for the four years preceding the
2 filing of this Complaint.

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE SICK PAY IN VIOLATION OF LABOR CODE SECTION 246**

5 **(By Plaintiff and the Sick Pay Class As Against All Defendants and Doe Defendants)**

6 103. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
7 by reference.

8 104. Sick pay must be compensated at the employee's regular rate of pay, for the workweek
9 in which the paid leave was taken, or at a rate determined by averaging over 90 days. Labor Code
10 §246(1).

11 105. By failing to pay Plaintiff and the Sick Pay Class for sick pay at the correct rate,
12 Defendants willfully violated Labor Code §246.

13 106. Defendants' unlawful acts deprived Plaintiff and the Sick Pay Class of sick pay in
14 amounts to be determined at trial, and they are entitled to recover these amounts, with interest,
15 attorneys' fees, and costs.

16 **SEVENTH CAUSE OF ACTION**

17 **FAILURE TO TIMELY PAY EARNED WAGES DURING EMPLOYMENT IN**

18 **VIOLATION OF LABOR CODE SECTION 204**

19 **(By Plaintiff and the Pay Day Class As Against All Defendants and Doe Defendants)**

20 107. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
21 by reference.

22 108. Plaintiff and the Pay Day Class have been employed by Defendants in the State of
23 California. In California, wages must be paid at least twice during each calendar month on days
24 designated in advance by the employer as regular paydays, subject to some exceptions. Labor Code
25 §204(a). Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid
26 between the 16th and the 26th day of that month and wages earned between the 16th and the last day,
27 inclusive, of any calendar month must be paid between the 1st and 10th day of the following month.
28 *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within

1 seven (7) calendar days following the close of the payroll period in which wages were earned. Labor
2 Code §204(d).

3 109. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to
4 timely pay Plaintiff's and the Pay Day Class' earned wages (including minimum wages, overtime
5 wages, meal period premium wages, rest period premium wages, vacation/PTO), in violation of Labor
6 Code §204.

7 110. Defendants' aforementioned policies, practices, and/or procedures resulted in their
8 failure to pay Plaintiff and the Pay Day Class their earned wages within the applicable time frames
9 outlined in Labor Code §204.

10 111. Defendants' failure to timely pay Plaintiff and the Pay Day Class their earned wages
11 in accordance with Labor Code §204 was willful. Defendants had the ability to timely pay all wages
12 earned by hourly workers in accordance with Labor Code §204, but intentionally adopted policies or
13 practices incompatible with the requirements of Labor Code §204. When Defendants failed to timely
14 pay Plaintiff and the Pay Day Class all earned wages, they knew what they were doing and intended
15 to do what they did.

16 112. As a result of Defendants' unlawful conduct, Plaintiff and the Pay Day Class have
17 suffered damages in an amount subject to proof, to the extent that they were not timely paid their
18 earned wages pursuant to Labor Code §204.

19 113. Pursuant to Labor Code §210, Plaintiff and the Pay Day Class are entitled to recover
20 civil penalties as follows: (1) for any initial violation, one hundred dollars (\$100) for each failure to
21 pay each employee; and (2) for each subsequent violation, or any willful or intentional violation, two
22 hundred dollars (\$200) for each failure to pay each employee, plus twenty-five (25%) percent of the
23 amount unlawfully withheld.

24 **EIGHTH CAUSE OF ACTION**

25 **FAILURE TO TIMELY PAY ALL EARNED WAGES AND FINAL PAYCHECKS DUE**
26 **AT TIME OF SEPARATION OF EMPLOYMENT IN VIOLATION OF**
27 **LABOR CODE SECTIONS 201, 202, AND 203**

28 **(By Plaintiff and the Waiting Time Class As Against All Defendants and Doe Defendants)**

1 114. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
2 by reference.

3 115. At all times relevant to this Complaint, Plaintiff and the other members of the Waiting
4 Time Class were employees of Defendants, covered by Labor Code §§201 and 202.

5 116. Pursuant to Labor Code §§201 and 202, Plaintiff and members of the Waiting Time
6 Class were entitled upon termination to timely payment of all wages earned and unpaid prior to
7 termination. Discharged employees were entitled to payment of all wages earned and unpaid prior to
8 discharge immediately upon termination. Employees who resigned were entitled to payment of all
9 wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if
10 they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid
11 prior to resignation at the time of resignation.

12 117. Defendants failed to pay Plaintiff and members of the Waiting Time Class all wages
13 earned and unpaid prior to separation of employment, in accordance with either Labor Code §§201
14 or 202. Plaintiff is informed and believes and thereon alleges that at all relevant times within the
15 limitations period applicable to this cause of action Defendants maintained a policy or practice of not
16 paying hourly employees all earned wages timely upon separation of employment.

17 118. Defendants' failure to pay Plaintiff and members of the Waiting Time Class all wages
18 earned prior to separation of employment timely in accordance with Labor Code §§201 and 202 was
19 willful. Defendants had the ability to pay all wages earned by Waiting Time Class Members prior to
20 separation of employment in accordance with Labor Code §§201 and 202, but intentionally adopted
21 policies or practices incompatible with the requirements of Labor Code §§201 and 202. Defendants'
22 practices include failing to pay at least minimum wage for all time worked, failing to pay overtime
23 wages for overtime hours worked, failing to pay premium wages for workdays Defendants did not
24 provide employees all meal periods in compliance with California law, failing to pay premium wages
25 for workdays Defendants did not provide employees all rest periods in compliance with California
26 law, failure to pay all accrued and vested vacation/PTO wages upon termination, and failure to
27 provide sick pay. When Defendants failed to pay its hourly non-exempt workers all earned wages
28 timely upon separation of employment, it knew what they were doing and intended to do what it did.

119. Pursuant to either Labor Code §§201 or 202, Plaintiff and members of the Waiting Time Class are entitled to all wages earned prior to separation of employment that Defendants did not pay them.

120. Pursuant to Labor Code §203, Plaintiff and members of the Waiting Time Class are entitled to continuation of their wages, from the day their earned and unpaid wages were due upon separation until paid, up to a maximum of 30 days.

NINTH CAUSE OF ACTION

**FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN
VIOLATION OF LABOR CODE SECTION 226**

(By Plaintiff and the Wage Statement Class As Against All Defendants and Doe Defendants)

121. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

122. At all relevant times, Plaintiff and the members of the Wage Statement Class were non-exempt employees of Defendants and covered by Labor Code §226.

123. Pursuant to Labor Code §226 (a), Plaintiff and members of the Wage Statement Class were entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage statement accurately stating the following:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

124. Defendants' illegal practices (described in more detail above and below, including but not limited to, Defendants' failure to pay all minimum wage and overtime for all hours worked, failure

1 to pay meal and rest period premiums, failure to pay for all accrued and vested vacation/PTO, failure
2 to pay sick pay wages, and failure to pay reimbursement pay) resulted in Defendants not providing
3 Plaintiff and other California non-exempt employees with accurate and complete itemized wage
4 statements in violation of Labor Code §226. The wage statements Defendants provided to employees
5 were inadequate for reasons including but not limited to Defendants inaccurately or failing to state
6 the following: the number of hours worked, the gross wages earned, the net wages earned, and hourly
7 rates in place during the pay period with corresponding hours worked.

8 125. Defendants' failure to provide Plaintiff and members of the Wage Statement Class
9 with accurate and complete wage statements was knowing and intentional. Defendants had the ability
10 to provide Plaintiff and members of the Class with accurate and complete wage statements but
11 intentionally provided wage statements that Defendants knew were not accurate. Defendants
12 knowingly and intentionally put in place practices which deprived employees of wages and resulted
13 in Defendants' knowing and intentional providing of inaccurate wage statements.

14 126. As a result of Defendants unlawful conduct, Plaintiff and members of the Wage
15 Statement Class have suffered injury in that the wage statements inaccurately stated and/or failed to
16 state the aforementioned items of information and Plaintiff and the members of the class could not
17 promptly and easily determine from the wage statement alone an accurate statement of: the gross
18 wages earned, and the net wages earned.

19 127. Pursuant to Labor Code §226(e), Plaintiff and members of the Wage Statement Class
20 are entitled to recover actual damages or fifty dollars for the initial pay period in which a violation of
21 Labor Code §226 occurred and one-hundred dollars for each violation of Labor Code §226 in a
22 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

23 128. Pursuant to Labor Code §226(g), Plaintiff and members of the Wage Statement Class
24 are entitled to bring an action for injunctive relief to ensure Defendants' compliance with Labor Code
25 §226(a). Injunctive relief is warranted because Defendants continue to provide currently employed
26 members of the Class with inaccurate wage statements in violation of Labor Code §226(a) and
27 currently employed members of the Class have no adequate legal remedy for the continuing injuries
28 that will be suffered as a result of Defendants' ongoing unlawful conduct. Injunctive relief is the only

1 remedy available for ensuring Defendants comply with Labor Code §226(a).

2 129. Pursuant to Labor Code §226(e) and 226(g), Plaintiff and members of the Class are
3 entitled to recover the full amount of penalties due under Labor Code §226(e), reasonable attorney
4 fees, and costs of suit.

5 **TENTH CAUSE OF ACTION**

6 **UNFAIR BUSINESS PRACTICES, IN VIOLATION OF**
7 **BUSINESS AND PROFESSIONS CODE SECTION 17200, *et seq.***

8 **(By Plaintiff and the California Class As Against All Defendants and Doe Defendants)**

9 130. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
10 by reference.

11 131. The unlawful conduct of Defendants alleged herein constitutes unfair competition
12 within the meaning of California Business and Professions Code §17200. This unfair conduct includes
13 Defendants' use of policies and procedures which resulted in the following: failing to pay employees
14 at least the minimum wage rate for all hours which they worked; failure to pay overtime wages for
15 overtime hours worked; failure to provide all required meal periods or pay meal period premium
16 wages; failure to authorize or permit, or provide, all required rest periods or pay rest period premium
17 wages; failure to pay accrued and vested vacation/PTO wages; failure to provide proper sick pay;
18 statutory penalties for failure to timely pay earned wages during employment; statutory waiting time
19 penalties in the form of continuation wages for failure to timely pay employees all wages due upon
20 separation of employment; statutory penalties for failure to provide accurate wage statements. Due to
21 their unfair and unlawful business practices in violation of the Labor Code, Defendants have gained
22 a competitive advantage over other comparable companies doing business in the State of California
23 that comply with their obligations to pay employees for all hours worked, to provide meal periods or
24 pay meal period premium wages, to authorize or permit rest periods or pay rest period premium
25 wages, to provide vacation/PTO pay, to provide sick pay, to timely pay wages during employment,
26 to timely pay all wages due upon separation of employment, and to provide proper wage statements
27 during the course of employment.

28 132. As a result of Defendants' unfair competition as alleged herein, Plaintiff and members

1 of the Minimum Wage Class, Overtime Class, Meal Period Class, Rest Period Class, Vacation Pay
2 Class, Sick Pay Class, Pay Day Class, Waiting Time Class, and Wage Statement Class, have suffered
3 injury in fact and lost money or property, as described in more detail above.

4 133. Pursuant to California Business and Professions Code §17203, Plaintiff and members
5 of the Minimum Wage Class, Overtime Class, Meal Period Class, Rest Period Class, Vacation Pay
6 Class, Sick Pay Class, Pay Day Class, Waiting Time Class, and Wage Statement Class are entitled to
7 restitution of all wages and other monies rightfully belonging to them that Defendants failed to pay
8 and wrongfully retained by means of their unlawful and unfair business practices. Plaintiff also seeks
9 an injunction against Defendants on behalf of the California Class enjoining Defendants, and any and
10 all persons acting in concert with them, from engaging in each of the unlawful practices, policies and
11 patterns set forth herein.

12 **ELEVENTH CAUSE OF ACTION**

13 **CIVIL PENALTIES AND WAGES PURSUANT TO THE** 14 **PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.** 15 **(By Plaintiff As Against All Defendants and Doe Defendants)**

16 134. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
17 by reference.

18 135. During the period beginning one-year period preceding the sending of the initial notice
19 to the LWDA to the present, Defendants violated Labor Code §§201, 202, 203, 226, 226.7, 510, 512,
20 1194, 1197, and 1198 as alleged in more detail below.

21 136. **Failure to Pay Wages for All Hours Worked at the Legal Minimum Wage:**
22 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees.
23 Labor Code §§1194 and 1197 require an employer to compensate employees for all “hours worked”
24 at least at a minimum wage rate of pay as established by the Industrial Welfare Commission (“IWC”)
25 and the Wage Orders. This includes the time an employee spends, either directly or indirectly,
26 performing services which inure to the benefit of the employer. Plaintiff and aggrieved employees
27 worked more minutes per shift than Defendants credited them with having worked.

28 137. Specifically, in this case Defendants maintained a policy, practice, and/or procedure

1 whereby Defendant Plaintiff and other current and former aggrieved California-based non-exempt
2 hourly employees (“Aggrieved Employees”) worked more minutes per shift than Defendants credited
3 them with having worked. Defendants “rounded down” or “shaved down” Plaintiff’s and Aggrieved
4 Employees total daily hours worked at the time of their clock-in and clock-out to the nearest quarter
5 of an hour, to the benefit of Defendants. This resulted in Plaintiff and aggrieved employees working
6 time for which they were not compensated any wages, in violation of Labor Code §§1194, 1197, and
7 the Wage Orders.

8 138. Further, Defendants maintained a policy, practice, and/or procedure whereby
9 Defendants required Plaintiff and Aggrieved Employees to complete other off-the-clock work tasks
10 after clocking out for the end of their shifts and/or during uncompensated meal periods, resulting in
11 off-the-clock work and the underpayment of minimum and overtime wages owed to Plaintiff and
12 Aggrieved Employees.

13 139. **Failure to Pay Overtime Wages For Overtime Hours Worked:** Defendants
14 employed many of their employees, including Plaintiff, as non-exempt, hourly employees. In
15 California, an employer is required to pay hourly employees for all “hours worked,” which includes
16 all time that an employee is under control of the employer and all time the employee is suffered and
17 permitted to work. This includes the time an employee spends, either directly or indirectly, performing
18 services that inure to the benefit of the employer. Labor Code §§510 and 1194 require an employer
19 to compensate employees a higher rate of pay for hours worked in excess of 8 hours in a workday, 40
20 hours in a workweek, and on any seventh consecutive day of work in a workweek. Any work in excess
21 of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first
22 eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate
23 of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of
24 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for
25 an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall
26 be compensated at the rate of no less than twice the regular rate of pay of an employee. (Lab. Code
27 §510.)

28 140. In this case, Defendants maintained a policy, practice, and/or procedure whereby

1 Defendant “rounded down” or “shaved down” Plaintiff’s and Aggrieved Employees total daily hours
2 worked at the time of their clock-in and clock-out to the nearest quarter of an hour, to the benefit of
3 Defendants. This resulted in Plaintiff and aggrieved employees working time for which they were not
4 compensated any wages, in violation of Labor Code §510, and the Wage Orders.

5 141. Further, Defendants maintained a policy, practice, and/or procedure whereby
6 Defendants required Plaintiff and Aggrieved Employees to complete other off-the-clock work tasks
7 after clocking out for the end of their shifts and/or during uncompensated meal periods, resulting in
8 off-the-clock work and the underpayment of minimum and overtime wages owed to Plaintiff and
9 Aggrieved Employees.

10 142. **Failure to Pay Wages for Overtime Hours Worked at the Overtime Rate of Pay:**
11 In California, an employer is required to pay hourly employees for all “hours worked,” which includes
12 all time that an employee is under the control of the employer and all time the employee is suffered
13 or permitted to work. This includes the time an employee spends, either directly or indirectly,
14 performing services which inure to the benefit of the employer.

15 143. Labor Code §§510 and 1194 and Wage Order 16 require an employer to compensate
16 employees at a higher rate of pay for hours worked in excess of eight (8) hours in a workday, more
17 than forty (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

18 Any work in excess of eight hours in one workday and any work in excess of 40 hours
19 in any one workweek and the first eight hours worked on the seventh day of work in
20 any one workweek shall be compensated at the rate of no less than one and one-half
21 times the regular rate of pay for an employee. Any work in excess of 12 hours in one
22 day shall be compensated at the rate of no less than twice the regular rate of pay for
an employee. In addition, any work in excess of eight hours on any seventh day of a
workweek shall be compensated at the rate of no less than twice the regular rate of pay
of an employee.

23 Labor Code §510; Wage Order 4, §3.

24 144. Defendants failed to pay Plaintiff and Aggrieved Employees all wages at the
25 applicable minimum wage for all hours worked due to Defendants’ policies, practices, and/or
26 procedures including, but not limited to:

27 a. Defendants maintained a policy, practice, and/or procedure whereby rather than
28 paying Plaintiff and Aggrieved Employees overtime wages for overtime hours worked at the proper

overtime rate, it paid Plaintiff and Aggrieved Employees straight wages. As a result, Defendants failed to properly pay Plaintiff and Aggrieved Employees their proper overtime wages.

b. Defendants maintained a policy, practice, and/or procedure whereby Defendants required Plaintiff and Aggrieved Employees to complete other off-the-clock work tasks after clocking out for the end of their shifts and/or during uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum and overtime wages owed to Plaintiff and Aggrieved Employees.

145. To the extent Plaintiff and Aggrieved Employees had already worked 8 hours in the workday and/or during workweeks Plaintiff and Aggrieved Employees had already worked 40 hours in a workweek, Plaintiff and Aggrieved Employees should have been paid overtime for this unpaid time. This resulted in hourly non-exempt employees working time which should have been paid at the legal overtime rate but was not paid any wages in violation of Labor Code §§510, 1194, and Wage Order 4, §3.

146. Defendants' foregoing policy, practice, and/or procedure resulted in Defendants failing to pay Plaintiff and Aggrieved Employees for all overtime hours worked, in violation of Labor Code §§510, 1194, 1198, and the Wage Order.

147. **Failure to Pay Hourly Non-Exempt Employees Wages to Compensate Them for Workdays Defendants Failed to Provide Required Meal Periods:** California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than 30-minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Cal. Lab. Code §§226.7, 512; Wage Order 9-2001, 11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second such meal period of not less than 30 minutes prior to the start of the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on duty meal periods. If an

1 employer fails to provide an employee a meal period in accordance with the law, the employer must
2 pay the employee one hour of pay at the employee's regular rate of pay for each workday that a legally
3 required meal period was not timely provided or was not duty-free. *Id.*

4 148. During the four years prior to the filing of the complaint, Plaintiff and Aggrieved
5 Employees regularly worked shifts of more than 5 hours in length. Nevertheless, Plaintiff and
6 Aggrieved Employees were not given an uninterrupted 30-minute meal break for every five hours of
7 work because Defendants' systematic company policy pressured and/or required employees to work
8 without receiving meal periods, or the meal breaks were interrupted, untimely, taken while working,
9 and/or were shorter than 30 minutes. Nevertheless, Defendants automatically deducted 30 minutes
10 from Plaintiff's and Plaintiff and Aggrieved Employees' daily hours worked and attributed that time
11 to a first meal period. At times, Plaintiff and California non-exempt employees would work in excess
12 of 10 hours which would entitled them to a second meal period before the 10th hour of work.
13 Defendants did not provide Plaintiff and California non-exempt employees with a second meal period
14 when they worked in excess of 10 hours.

15 149. Further, Defendants did not have a procedure in place to pay Plaintiff and Aggrieved
16 Employees a premium wage for their missed meal periods when they did not receive a second meal
17 period. Accordingly, Defendants did not pay Plaintiff and Aggrieved Employees a premium wage
18 when they did not receive a second meal period. Defendants also failed to pay Plaintiff and Aggrieved
19 Employees one hour of pay at their regular rate of pay for each workday Plaintiff and Aggrieved
20 Employees did not receive all legally compliant meal periods. Defendants lacked a policy and
21 procedure for compensating Plaintiff and Aggrieved Employees with premium wages when they did
22 not receive all legally required meal periods in a legally compliant manner. These practices and
23 procedures resulted in Plaintiff and Aggrieved Employees not receiving wages to compensate them
24 for workdays which Defendants did not provide them with legally compliant meal periods in
25 compliance with California law.

26 150. **Failure to Pay Hourly Employees Wages to Compensate Them for Workdays**
27 **Defendants Failed to Provide Required Rest Periods:** Defendants often employed hourly
28 employees, including the named Plaintiff and Aggrieved Employees, for shifts at least three and one-

1 half (3.5) hours in length. California law states that “[e]very employer shall authorize and permit all
2 employees to take rest periods, which insofar as practicable shall be in the middle of each work period.
3 The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
4 minutes net rest time per four (4) hours or major fraction thereof. ... If an employer fails to provide
5 an employee a rest period in accordance with the applicable provisions of this order, the employer
6 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
7 workday that the rest period is not provided.” (Wage Orders, subd. 12; see Lab. Code §226.7.) Under
8 California law, “[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six
9 hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of
10 more than 10 hours up to 14 hours, and so on.” (*Brinker v. Superior Court* (2012) 53 Cal.4th 1004,
11 1029; Lab. Code §226.7; Wage Orders, subd. 12.) Rest periods must be in the middle of each work
12 period. (Wage Orders, subd. 12.) If an employer fails to provide an employee a timely and legally
13 compliant rest period, the employer must pay the employee one hour of pay at the employee’s regular
14 rate of compensation for each work day that a legally required meal period was not provided or was
15 not duty free. (*Id.*)

16 151. Despite that California law requires employers to provide employees with one 10-
17 minute rest break when an employee’s work shift is in excess of 3.5 hours, a second 10 minute rest
18 break when a shift is in excess of 6 hours, a third 10-minute rest break when a shift is in excess of 10
19 hours, Defendants regularly failed to do so. As a result, Plaintiff and Aggrieved Employees did not
20 receive legally compliant rest periods as they were untimely, on-duty, or were not taken at all.
21 Defendants also failed to pay employees one hour of pay at their regular rate of pay for each workday
22 Plaintiff and Aggrieved Employees did not receive all timely and legally compliant rest periods. This
23 practice resulted in Plaintiff and Aggrieved Employees not receiving wages to compensate them for
24 workdays which Defendants did not provide them with rest periods in compliance with California
25 law.

26 152. **Failure to Timely Pay Earned Wages During Employment:** In California, wages
27 must be paid at least twice during each calendar month on days designated in advance by the employer
28 as regular paydays, subject to some exceptions. Labor Code §204(a). Wages earned between the 1st

1 and 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of
2 that month and wages earned between the 16th and the last day, inclusive, of any calendar month
3 must be paid between the 1st and 10th day of the following month. *Id.* Other payroll periods such as
4 those that are weekly, biweekly, or semimonthly, must be paid within seven (7) calendar days
5 following the close of the payroll period in which wages were earned. Labor Code §204(d). Plaintiff
6 maintains that Defendants failed to timely pay Plaintiff and Aggrieved Employees in violation of
7 Labor Code §204.

8 **153. Failure to Pay California Employees All Wages Due at Time of**
9 **Termination/Resignation:** An employer is required to pay all unpaid wages timely after an
10 employee's employment ends. The wages are due immediately upon termination (Labor Code §201)
11 or within 72 hours of resignation (Labor Code §202). Because Defendants failed to pay Plaintiff and
12 Aggrieved Employees all their earned wages (including minimum wages, overtime wages, unpaid
13 meal and rest period premium wages), Defendants failed to pay Plaintiff and Aggrieved Employees
14 timely after each employee's termination and/or resignation.

15 **154. Pay Stub Violations:** Labor Code §226(a) provides (inter alia) that, upon paying an
16 employee his or her wages, the employer must "furnish each of his or her employees ... an itemized
17 statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, except
18 for any employee whose compensation is solely based on a salary and who is exempt from payment
19 of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
20 Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee
21 is paid on a piece-rate basis, (4) all deductions, provided, that all deductions made on written orders
22 of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
23 dates of the pay period for which the employee is paid, (7) the name of the employee and his or her
24 social security number, (8) the name and address of the legal entity that is the employer, and (9) all
25 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
26 at each hourly rate by the employee."

27 **155.** Defendants failed to provide accurate and complete wage statements to Plaintiff and
28 Aggrieved Employees. Defendants provided to employees wage statements which were inadequate

1 as a result of the aforementioned conduct (i.e., failure to pay all minimum wage and overtime for all
2 hours worked and failure to pay meal and rest period premiums), the wage statements inaccurately
3 stated: the gross wages earned, total hours worked by the employee, the net wages earned, and
4 applicable hourly rates in effect in a pay period with corresponding number of hours worked.
5 Defendants applied these policies and procedures to Plaintiff and Aggrieved Employees which
6 resulted in Defendants failing to provide complete and accurate wage statements to non-exempt
7 employees in compliance with Labor Code §226, subdivision (a).

8 156. Labor Code §2699, subdivisions (a) and (g) authorize an aggrieved employee, on
9 behalf of herself or herself and other current or former employees, to bring a civil action to recover
10 civil penalties against all Defendants pursuant to the procedures specified in Labor Code §2699.3.

11 157. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
12 §2699.3. Plaintiff filed notice with the LWDA on March 8, 2024, and provided notice to Defendants
13 by certified mail which provided notice of the specific provisions of the Labor Code alleged to have
14 been violated, including the facts and theories to support the alleged violations.

15 158. Pursuant to Labor Code §2699.3, the LWDA must give written notice by certified mail
16 to the parties that it intends to investigate the alleged violations of the Labor Code within 65 days of
17 the date of the complainant's written notice and/or Defendants may attempt to cure for certain
18 violations. The LWDA failed to provide the parties notice within 65 days of the date of Plaintiff's
19 letter that the LWDA intends to investigate Plaintiff's claims and/or Defendants failed to cure any of
20 the alleged violations which could have been cured.

21 159. Pursuant to Labor Code §2699(a) and (f), Plaintiff seeks, within the one year prior to
22 the mailing of the LWDA letter, civil penalties for Defendants' violations of Labor Code 201, 202,
23 203, 226, 226.7, 510, 512, 1194, 1197, and 1198, in the following amounts:

24 a. For violations of Labor Code §§201, 202, 203, 226.7, 1197, and 1198; one
25 hundred dollars (\$100) for each employee per pay period for the initial violation and two hundred
26 dollars (\$200) for each employee per pay period for each subsequent violation [penalty amounts
27 established by Labor Code §2699(f)(2)].

28 b. For violations of Labor Code §226, subd. (a), two hundred fifty dollars (\$250)

1 for each employee for each pay period for the initial violation, and for each subsequent violation, one
2 thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
3 established by Labor Code §226.3].

4 c. For violations of Labor Code §226, subd. (a), seven hundred fifty dollars
5 (\$750) for each employee [penalty amounts established by Labor Code §226, subd. (f)]

6 d. For violations of Labor Code §§510, 512, and 1194, fifty dollars (\$50) for each
7 employee for each pay period for the initial violation, and for each subsequent violation, one hundred
8 dollars (\$100) for each underpaid employee for each pay period [penalty amounts established by
9 Labor Code §558]

10 160. Pursuant to Labor Code §2699(g), Plaintiff is entitled to an award of reasonable
11 attorney's fees and costs in connection with her claims for civil penalties.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE, PLAINTIFF ON HER OWN BEHALF AND ON BEHALF OF THOSE**
14 **SIMILARLY-SITUATED, PRAYS AS FOLLOWS:**

15 **ON ALL CAUSES OF ACTION:**

16 1. That the Court determine that this action may be maintained as a class action (for the
17 entire California Class and/or any and all of the specified sub-classes) pursuant to California Code of
18 Civil Procedure §382 and any other applicable law;

19 2. That the named Plaintiff be designated as class representative for the California Class
20 (and all sub-classes thereof);

21 3. A declaratory judgment that the practices complained herein are unlawful; and,

22 4. An injunction against Defendants enjoining them, and any and all persons acting in
23 concert with them, from engaging in each of the unlawful practices, policies and patterns set forth
24 herein.

25 **ON THE FIRST CAUSE OF ACTION**

26 1. That Defendants be found to have violated the minimum wage provisions of the Labor
27 Code and the IWC Wage Order as to Plaintiff and the Minimum Wage Class;

28 2. For damages, according to proof, including but not necessarily limited to unpaid

1 wages;

2 3. For any and all legally applicable penalties;

3 4. For liquidated damages pursuant to Labor Code §1194.2;

4 5. For pre-judgment interest, including but not limited to that recoverable under Labor
5 Code §1194, and post-judgment interest;

6 6. For attorneys' fees and costs of suit, including but not limited to that recoverable under
7 Labor Code §1194;

8 7. For pre-judgment interest, including but not limited to that recoverable under Labor
9 Code §218.6, and post-judgment interest; and,

10 8. For such and other further relief, in law and/or equity, as the Court deems just or
11 appropriate.

12 **ON THE SECOND CAUSE OF ACTION**

13 1. That Defendants be found to have violated the overtime provisions of the Labor Code
14 and the IWC Wage Order as to Plaintiff and the Overtime Class;

15 2. For damages, according to proof, including but not limited to unpaid wages;

16 3. For any and all legally applicable penalties;

17 4. For pre-judgment interest, including but not limited to that recoverable under Labor
18 Code §1194, and post-judgment interest;

19 5. For attorneys' fees and costs of suit, including but not limited to that recoverable under
20 Labor Code §1194; and

21 6. For such other further relief, in law and/or equity, as the Court deems just or
22 appropriate.

23 **ON THE THIRD CAUSE OF ACTION**

24 1. That Defendants be found to have violated the meal period provisions of the Labor
25 Code and the Wage Order as to Plaintiff and the Meal Period Class;

26 2. For damages, according to proof, including unpaid premium wages;

27 3. For any and all legally applicable penalties;

28 4. For pre-judgment interest, including but not limited to that recoverable under Labor

Code §218.6, and post-judgment interest; and

5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FOURTH CAUSE OF ACTION

1. That Defendants be found to have violated the rest period provisions of the Labor Code and the Wage Order as to Plaintiff and the Rest Period Class;

2. For damages, according to proof, including unpaid premium wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code §218.6, and post-judgment interest; and

5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FIFTH CAUSE OF ACTION

1. That Defendants be found to have violated the vested vacation/PTO wages provisions of the Labor Code as to Plaintiff and the Vacation Pay Class;

2. For damages, according to proof, including unpaid wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code §218.6, and post-judgment interest; and

5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE SIXTH CAUSE OF ACTION

1. That Defendants be found to have violated the provisions of the Labor Code regarding correct payment of sick pay to Plaintiff and the Sick Pay Class;

2. For damages and/or penalties, according to proof, including damages and/or statutory penalties under the Labor Code and any other legally applicable damages or penalties; and

3. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

1 **ON THE SEVENTH CAUSE OF ACTION**

2 1. That Defendants be found to have violated Labor Code 204 as to Plaintiff and the Pay
3 Day Class;

4 2. For damages, according to proof;

5 3. For any and all legally applicable penalties, including but not limited to those
6 recoverable pursuant to Labor Code §210(a);

7 4. For pre-judgment interest, including but not limited to that recoverable under Labor
8 Code §218.6, and post-judgment interest; and

9 5. For such other further relief, in law and/or equity, as the Court deems just or
10 appropriate.

11 **ON THE EIGHTH CAUSE OF ACTION**

12 1. That Defendants be found to have violated the provisions of the Labor Code regarding
13 payment of all unpaid wages due upon resignation or termination as to the Waiting Time Class;

14 2. For damages and/or penalties, according to proof, including damages and/or statutory
15 penalties under Labor Code §203 and any other legally applicable damages or penalties;

16 3. For pre-judgment interest, including under Labor Code §218.6, and post-judgment
17 interest; and,

18 4. For such and other further relief, in law and/or equity, as the Court deems just or
19 appropriate.

20 **ON THE NINTH CAUSE OF ACTION**

21 1. That Defendants be found to have violated the provisions of the Labor Code regarding
22 proper itemized paystubs as to the Wage Statement Class.

23 2. For damages and/or penalties, according to proof, including damages and/or statutory
24 penalties under Labor Code §226(e) and any other legally applicable damages or penalties;

25 3. For pre-judgment interest and post-judgment interest; and,

26 4. For attorneys' fees and costs of suit, including but not limited to that recoverable under
27 Labor Code §226(e); and,

28 5. For such and other further relief, in law and/or equity, as the Court deems just or

1 appropriate.

2 **ON THE TENTH CAUSE OF ACTION**

3 1. That Defendants be found to have violated California Business and Professions Code
4 §17200, *et seq.*, for the conduct alleged herein as to all Classes;

5 2. A declaratory judgment that the practices complained herein are unlawful;

6 3. An injunction against Defendants enjoining them, and any and all persons acting in
7 concert with them, from engaging in each of the unlawful practices, policies and patterns set forth
8 herein;

9 4. For restitution to the full extent permitted by law; and,

10 5. For such and other further relief, in law and/or equity, as the Court deems just or
11 appropriate.

12 **ON THE ELEVENTH CAUSE OF ACTION**

13 1. That the Defendants be found to have violated the provisions of the Labor Code and
14 the IWC Wages Orders as to the Plaintiff and current and former employees;

15 2. For any and all legally applicable penalties during the relevant statute of limitations
16 subject to any permissible tolling, including but not limited to that recoverable under Labor Code,
17 including but not limited to §§2699(f), 201, 202, 203, 204, 226(a), 226.7, 245-248.5, 510, 512(a),
18 1174(d), 1174.5, 1194, 1197, 1197.1, and 1198

19 3. For attorneys' fees and costs of suit, including but not limited to that recoverable under
20 Labor Code §2699(g); and,

21 4. For such and other further relief, in law and/or equity, as the Court deems just or
22 appropriate.

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Dated: August 7, 2024

Respectfully submitted,
E&L, LLP



By: _____

David Lavi, Esq.
Arie Ebrahimian, Esq.
Attorneys for PLAINTIFF MARITZA FERNANDEZ
on behalf of herself and others similarly situated and
current and former aggrieved employees

DEMAND FOR JURY TRIAL

PLAINTIFF MARITZA FERNANDEZ demands a trial by jury for herself and the California Class on all claims so triable.

Dated: August 7, 2024

Respectfully submitted,
E&L, LLP



By: _____

David Lavi, Esq.
Arie Ebrahimian, Esq.
Attorneys for PLAINTIFF MARITZA FERNANDEZ
on behalf of herself and others similarly situated and
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