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on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

CHANNA ALCALA, on behalf of herself and
others similarly situated,

Plaintiff,

vs.

NATIONAL HOME HEALTH SERVICES,
INC., a California Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Failure to Pay Vacation Wages Under Labor Code § 227.3;
6. Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802;
7. Failure to Provide Accurate Wage Statements Under Labor Code § 226(a);
8. Failure to Timely Pay All Final Wages Under Labor Code § 203; and
9. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

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

4 INTRODUCTION

5 1. The Employees who comprise the Class, including Plaintiff, are nonexempt
6 employees pursuant to the applicable Wage Order of the IWC. Defendants hire Employees who
7 work in nonexempt positions at the direction of Defendants in the State of California. Plaintiff and
8 the Class members were either not paid by Defendants for all hours worked or were not paid at the
9 appropriate minimum, regular and overtime rates. Plaintiff contends that Defendants, failed to pay
10 Plaintiff and the Class members all wages due and owing, including for nonproductive time, failed
11 to provide meal and rest breaks, and failed to furnish accurate wage statements, all in violation of
12 various provisions of the California Labor Code and applicable Wage Orders where applicable.

13 2. Plaintiff brings this action on behalf of herself and all current and former nonexempt
14 Employees within the State of California who, at any time four (4) years prior to the filing of this
15 lawsuit, are or were employed by Defendants NATIONAL HOME HEALTH SERVICES, INC. and
16 DOES 1 through 50 (all defendants being collectively referred to herein as “Defendants”). Plaintiff
17 alleges that Defendants, and each of them, violated various provisions of the California Labor Code,
18 relevant orders of the Industrial Welfare Commission (IWC) and California Business & Professions
19 Code, and seeks redress therefore.

20 3. Plaintiff is a resident of California and during the time period relevant to this
21 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
22 California at Defendants’ facilities and offices in San Jacinto, California. Plaintiff and the other
23 Class members worked for Defendants in Riverside County, and in other nonexempt positions,
24 throughout California and, and consistently worked at Defendants’ behest without being paid all
25 wages due. More specifically, Plaintiff and the other similarly situated Class members were
26 employed by Defendants and worked at Defendants’ offices and other facilities where the conduct
27 giving rise to the allegations in this Class Action Complaint occurred. Upon information and belief,
28 Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was

1 subjected to the same policies and practices, and (3) endured similar violations at the hands of
2 Defendants as the other Employee Class members who served in similar and related positions.

3 4. Defendants had a policy or practice of paying Employees on a piece rate basis, where
4 Defendants would assign a given number of hours to each piece of work completed by Employees,
5 and Employees hours would be calculated accordingly. In actuality, Employees were required to
6 work more hours on a given piece than assigned by Defendants, thus resulting in the improper
7 calculation and underpayment of wages and overtime to Employees as well as a failure to pay
8 Employees for all nonproductive time and Defendant provided them with inaccurate wage
9 statements that prevented Plaintiff and the Class from learning of these unlawful pay practices.
10 Defendants also failed to provide Plaintiff and the Class with lawful meal and rest periods, as
11 employees were not provided with the opportunity to take timely, uninterrupted, and duty-free meal
12 and rest periods as required by the Labor Code.

13 THE PARTIES

14 A. THE PLAINTIFF

15 5. Plaintiff CHANNA ALCALA has resided in California and during the time period
16 relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within
17 the State of California.

18 B. THE DEFENDANTS

19 6. Defendant NATIONAL HOME HEALTH SERVICES, INC. is a California
20 Corporation, with its principle executive offices in San Jose, California and has been listed as the
21 employer on the wage statements issued to Plaintiff during the relevant time period. NATIONAL
22 HOME HEALTH SERVICES, INC. lists a San Jose, California address with the California
23 Secretary of State, and upon information and belief, employs Plaintiff and the Class members in
24 Santa Clara County and throughout California, and conducts business throughout California.

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

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

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

13 **JURISDICTION AND VENUE**

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

22 **FACTUAL BACKGROUND**

23 10. The Employees who comprise the Class, including Plaintiff, are nonexempt
24 employees pursuant to the applicable Wage Order of the IWC. Defendants hire Employees who
25 work in nonexempt positions at the direction of Defendants in the State of California. Plaintiff and
26 the Class Members were either not paid by Defendants for all hours worked or otherwise were not
27 paid at the appropriate minimum, regular and overtime rates based on the number of assignments
28 and the type of assignments Plaintiff and the Class Members completed under a piece rate

1 calculation. Plaintiff was paid by piece-rate while she was employed as an employee for Defendants
2 by the number of patients visited, or by some hybrid calculation combining visits with an hourly
3 rate, without regard to the real-time hours worked by Plaintiff and the Employees in performing
4 tasks required of them by Defendants. Moreover, Plaintiff and Employees experienced waiting
5 time, between pieces and within the course and scope of their duties under Defendants' employ, and
6 other nonproductive time such as rest periods for which they were never paid wages. Additionally,
7 Employees were required to perform work related activities during unpaid meal periods. Moreover,
8 Employees were required to perform work-related tasks, after their scheduled shifts, including
9 dropping off samples to labs and completing necessary reports. The forgoing and uncompensated
10 working time was under the direction and control of Defendants, for which no wages were paid.

11 11. Plaintiff contends that Defendants, failed, to pay Plaintiff and the Class members all
12 wages due and owing, including for nonproductive time, failed to provide meal and rest breaks, and
13 failed to furnish accurate wage statements, all in violation of various provisions of the California
14 Labor Code and applicable Wage Orders where applicable.

15 12. Moreover, Defendants paid Plaintiff and Employees nondiscretionary commissions,
16 incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants
17 failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay,
18 and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of
19 calculating the overtime wage rate. Therefore, during times when Plaintiff and Employees worked
20 overtime and received nondiscretionary commissions, incentive pay, and/or nondiscretionary
21 bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

22 13. During the course of Plaintiff and the Class members' employment with
23 Defendants, they were not paid all wages they were owed, including for all work performed and
24 for all overtime hours worked and were forced to work during their meal and rest breaks to keep
25 labor budgets low. Defendants had a policy or practice of paying Employees on a piece rate basis,
26 where Defendants would assign a given number of hours to each piece of work completed by
27 Employees, and Employees hours would be calculated accordingly. In actuality, Employees were
28 required to work more hours on a given piece than assigned by Defendants, thus resulting in the

1 improper calculation and underpayment of wages and overtime to Employees.

2 14. As a matter of uniform Company policy, Plaintiff and the Class members were
3 required to work during their meal and rest breaks which were not compensated by Defendants in
4 violation of the California Labor Code. Plaintiff and the Class members were also not paid regular
5 wages and overtime for the time they were required to comply with other requirements imposed
6 upon them, which they had to complete while working through their meal and rest breaks and
7 without compensation. As a result, Plaintiff and the Class members worked shifts over eight (8),
8 ten (10), and twelve (12) hours in a day and/or over forty (40) hours in a work week, but they were
9 not paid at the appropriate overtime rate for all such hours, including by being required to perform
10 work duties and tasks without pay due to Defendants' policy or practice of paying Employees on a
11 piece rate basis. As a result, Plaintiff and the Class members worked substantial overtime hours
12 during their employment with Defendants for which they were not compensated, in violation of the
13 California Labor Code.

14 15. As a result of the above described failure to calculate and pay wages at the correct
15 rates, the daily work demands and pressures to work through breaks, and the other wage violations
16 they endured at Defendants' hands, Plaintiff and the Class members were not properly paid for all
17 wages earned and for all wages owed to them by Defendants, including when working more than
18 eight (8), ten (10), and twelve (12) hours in any given day and/or more than forty (40) hours in any
19 given week. As a result of Defendants' unlawful policies and practices, Plaintiff and Class members
20 incurred overtime hours worked for which they were not adequately and completely compensated.
21 To the extent applicable, Defendants also failed to pay Plaintiff and the Class members at an
22 overtime rate of 1.5 times the regular rate for the first eight hours of the seventh consecutive work
23 day in a week and overtime payments at the rate of two times the regular rate for hours worked over
24 eight (8) on the seventh consecutive work day, as required under the Labor Code and applicable
25 IWC Wage Orders.

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

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

7 18. Additionally from at least four (4) years prior to the filing of this lawsuit and
8 continuing to the present, Defendants have regularly required Employees to work shifts in excess of
9 five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30)
10 minutes, and shifts in excess of ten (10) hours without providing them with second meal periods of
11 not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one hour of
12 wages at each Employee’s effective hourly rate of pay, for each meal period that Defendants failed
13 to provide or deficiently provided.

14 19. From at least four (4) years prior to the filing of this lawsuit and continuing to the
15 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
16 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did Defendant
17 pay Employees premium pay for each day on which requisite rest breaks were not provided or were
18 deficiently provided. Additionally, as Employees were paid on a piece rate basis. Defendants failed
19 to separately compensate Employees for rest breaks which were systemically denied.

20 20. Defendants also had a common policy and practice of systemically failing to pay
21 Plaintiff and Class members the requisite and accrued vacation time pay in accordance with
22 California law. Specifically, Plaintiff and Class members accrued vested vacation time and/or paid
23 time off. However, Defendants failed to pay all accrued vacation time and/or paid time off owed to
24 Plaintiff and Class members upon their separation from employment.

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

members to use their personal mobile phone devices to make work related calls, log hours, and use GPS for navigational purposes. Plaintiff also had to work from home after making patient visits and was not reimbursed for any of the operating costs from working from home, such as internet and utilities. Plaintiff also had to use her personal computer when she worked from home. Upon information and belief, Class members were subject to the same requirements. However, Plaintiff and Class members were not fully reimbursed for these necessary expenses as required under Labor Code § 2802.

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

23. Additionally, from at least four (4) years prior to the filing of this lawsuit, and continuing to the present, Defendants have consistently failed to provide Employees with timely, accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

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

25. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 227.3, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1194.2, 1199 and 2802.

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

CLASS ALLEGATIONS

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

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

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

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

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

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

e. Subclass 5. Vacation Wages Subclass. All Class members who earned vacation time and/or paid time off without receiving compensation for all vested paid vacation.

f. Subclass 6. Expense Reimbursement Subclass. All Class members who incurred necessary and reasonable expenses in connection with performing their job duties for Defendants and who were subject to a policy and/or practice under which such expenses were not reimbursed.

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

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

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

29. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify

1 the class description with greater particularity or further division into subclasses or limitation to
2 particular issues.

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

6 **A. Numerosity**

7 31. The potential members of the class as defined are so numerous that joinder of all the
8 member of the class is impracticable. While the precise number of class member has not been
9 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
10 time period relevant to this lawsuit, employed more than 100 individuals were employed by
11 Defendant's within the State of California.

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

15 **B. Commonality**

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

- 18 a. Whether Defendants failed to pay Employees minimum wages for all hours worked,
19 including for non-productive time;
- 20 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 21 c. Whether Defendants failed to pay Employees overtime as required under Labor Code
22 § 510;
- 23 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC
24 Wage Orders, by failing to provide Employees with requisite meal periods or
25 premium pay in lieu thereof;
- 26 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
27 Orders, by failing to provide Employees with requisite rest breaks or premium pay
28 in lieu thereof;

- 1 f. Whether Defendants failed to pay Employees vacation wages as required under
2 Labor Code § 227.3;
- 3 g. Whether Defendants failed to reimburse Employees for necessary business expenses;
- 4 h. Whether Defendants violated Labor Code § 226(a);
- 5 i. Whether Defendants failed to keep accurate time and wage records;
- 6 j. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
7 wages and compensation due and owing at the time of termination of employment;
- 8 k. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and,
- 9 l. Whether Employees are entitled to equitable relief pursuant to Business and
10 Professions Code § 17200 *et seq.*

11 **C. Typicality**

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

16 **D. Adequacy of Representation**

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

20 **E. Superiority of Class Action**

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

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

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

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

39. Defendants failed to pay Employees minimum wages for all hours worked. Employees were paid on a piece rate basis, where Defendants would assign a given number of hours to each piece, and Employees hours would be calculated accordingly. In actuality, Employees would be required to work more hours on a given piece than assigned by Defendants, thus resulting in the improper calculation and underpayment of wages and overtime to Employees. Furthermore, Defendants consistently required Employees to work non-productive hours, or “waiting time,” without compensation in violation of California State law. Employees experienced waiting time during the work day which was uncompensated. Additionally, Employees were required to perform work related activities during unpaid meal periods. Moreover, Employees were required to perform work-related tasks, after their scheduled shifts, including dropping off samples to labs and completing necessary reports. The forgoing and uncompensated working time was under the direction and control of Defendants, for which no wages were paid.

40. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states:

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

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

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

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to

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

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

5 44. California Labor Code § 1194.2 also provides for the following remedies:

6 In any action under Section 1194 . . . to recover wages because of
7 the payment of a wage less than the minimum wages fixed by an
8 order of the commission, an employee shall be entitled to recover
liquidated damages in an amount equal to the wages unlawfully
9 unpaid and interest thereon.

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

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

17 **SECOND CAUSE OF ACTION**

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

19 **(Against All Defendants)**

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

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

1 49. Defendants had a consistent policy of not paying Employees wages for all hours
2 worked. As discussed above, Defendants policy of miscalculating the hours worked by Employees
3 resulted the unlawful understating of Employees wages, as discussed above. Based on information
4 and belief, Defendants did not make available to Employees a reasonable protocol for correcting
5 time records when Employees worked overtime hours.

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

13 51. Therefore, during times when Plaintiff and Employees worked overtime and
14 received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
15 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

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

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

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

28

1 **THIRD CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

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

17 58. Moreover, Defendants failed to compensate Employees for each meal period not
18 provided or inadequately provided, as required under Labor Code § 226.7.

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

22 **FOURTH CAUSE OF ACTION**

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

24 **(Against All Defendants)**

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

27 61. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
28 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of

1 not less than ten (10) minutes for each consecutive four (4) hour shift.

2 62. Defendants failed to provide Employees with timely rest breaks of not less than ten
3 (10) minutes for each consecutive four (4) hour shift.

4 63. Moreover, Defendants did not compensate Employees with an additional hour of pay
5 at each Employee's effective hourly rate for each day that Defendants failed to provide them with
6 adequate rest breaks, as required under Labor Code § 226.7. Additionally, as Employees were paid
7 on a piece rate basis Defendants failed to separately compensate Employees for rest breaks, which
8 were systemically denied.

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

12 **FIFTH CAUSE OF ACTION**

13 **FAILURE TO PAY VACATION WAGES UNDER LABOR CODE § 227.3**

14 **(Against All Defendants)**

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

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

21 67. However, Defendants implemented a common policy and practice of failing to pay
22 Plaintiff and Employees for all accrued vacation wages upon separation of employment, in violation
23 of Labor Code 227.

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

26 ///

27 ///

28 ///

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

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

70. Plaintiff is informed and believes and based thereon alleges that throughout the period applicable, Defendants required Plaintiff and the Class members to pay for necessary work related expenses they incurred. For example, Defendants required Plaintiff and the Class members to their personal mobile phone devices for work-related activities, such as requiring Plaintiff and Class members to use their personal mobile phone devices to make work related calls, log hours, and use GPS for navigational purposes. Plaintiff also had to work from home after making patient visits and was not reimbursed for any of the operating costs from working from home, such as internet and utilities. Plaintiff also had to use her personal computer when she worked from home. Upon information and belief, Class members were subject to the same requirements. Plaintiff and the Class members must be fully reimbursed for necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do so.

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

72. Defendants' knowing and willful failure to reimburse lawful necessary work related expenses and losses to Plaintiff and the Class members resulted in damages because, among other things, Defendants did not inform employees of their right to be reimbursed for those work related expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and necessary expenses was an expected and essential function of their employment with Defendants and that failure to incur those expenses would have adverse consequences on their employment.

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

7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ACCURATE STATEMENTS UNDER LABOR CODE § 226(a)**

9 **(Against All Defendants)**

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

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

20 76. Defendants failed to provide Employees with accurate itemized wage statements in
21 writing, as required by the Labor Code. Specifically, the wage statements given to Employees by
22 Defendants failed to include the total hours worked by the Employees, the number of piece-rate
23 units earned and any applicable piece rate Employees were paid, the inclusive dates of the period
24 for which the employee is paid, all applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each hourly rate by the employee. The wage statements
26 provided to Employees were confusing and required Employees to engage in discovery and refer to
27 outside sources to verify whether their pay was correct and potentially resulting in a miscalculation
28 by the Employees. Additionally, Defendants failed in their affirmative obligation to keep accurate

1 records of the correct overtime wages based on proper regular rate calculations that included
2 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total
3 amount of compensation of their Employees. Moreover, the wage statements given to Employees
4 by Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal
5 periods and rest breaks, and automatically deducted wages for alleged meal periods, all of which
6 Defendants knew or reasonably should have known were owed to Employees, as alleged
7 hereinabove.

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

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

18 **EIGHTH CAUSE OF ACTION**

19 **FAILURE TO TIMELY PAY ALL FINAL WAGES UNDER LABOR CODE § 203**

20 **(Against All Defendants)**

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

23 80. Numerous Employees are no longer employed by Defendants; they either quit
24 Defendants' employ or were fired therefrom.

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

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

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

NINTH CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

(Against All Defendants)

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

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

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

86. Business & Professions Code § 17200 et seq. prohibits unlawful and unfair business practices.

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

88. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint Defendants have acted contrary to these public policies, have violated specific

1 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
2 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
3 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
4 guaranteed to all employees under the law.

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

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

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

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

20 **RELIEF REQUESTED**

21 WHEREFORE, Plaintiff prays for the following relief:

- 22 1. For an order certifying this action as a class action;
- 23 2. For compensatory damages in the amount of the unpaid minimum wages for work
24 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
25 the filing of this action, as may be proven;
- 26 3. For liquidated damages in the amount equal to the unpaid minimum wage and
27 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 28 4. For compensatory damages in the amount of the hourly wage made by Employees

1 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
2 years prior to the filing of this action, as may be proven;

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

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

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

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

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

13 10. For restitution for unfair competition pursuant to Business & Professions Code
14 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

15 11. For compensatory damages in the amount of all previously unreimbursed business
16 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
17 from four (4) years prior to the original filing of this action, as may be proven;

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

21 13. For all general, special, and incidental damages as may be proven;

22 14. For an award of pre-judgment and post-judgment interest;

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- 15. For an award providing for the payment of the costs of this suit;
- 16. For an award of attorneys' fees; and
- 17. For such other and further relief as this Court may deem proper and just.

DATED: March 14, 2024

D.LAW, INC.

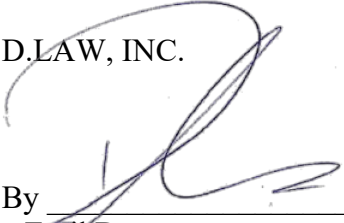
By _____
Emil Davtyan
David Yeremian
David Keledjian
Hrag A. Alexanian
Attorneys for Plaintiff CHANNA ALCALA
and the putative class

DEMAND FOR JURY TRIAL

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

DATED: March 14, 2024

D.LAW, INC.

By 

Emil Davtyan

David Yeremian

David Keledjian

Hrag A. Alexanian

Attorneys for Plaintiff CHANNA ALCALA
and the putative class