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of herself and others similarly situated

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

MONIQUE MATHEWS, an individual, on
behalf of herself and others similarly situated,

Plaintiff,

vs.

MERCED SNF OPERATIONS, LLC d/b/a
GOLDEN MERCED CARE CENTER, a
California limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 24CV-02377

CLASS ACTION

Assigned for All Purposes To:
Hon. Brian McCabe
Dept.:8

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226;
6. Failure to Maintain Records Under Labor Code §§ 1174 and 1174.5;
7. Failure to Produce Requested Records Under Labor Code §§ 226 and 1198.5;
8. Violation of Labor Code § 203; and
9. Violation of Business & Professions Code § 17200 *et seq.*; and
10. Penalties Pursuant to Labor Code § 2699, *et seq.*

DEMAND FOR JURY TRIAL

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

5 **I. INTRODUCTION**

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

14 2. Plaintiff is a resident of California and, during the time period relevant to this
15 Complaint, was employed by Defendants as a non-exempt hourly employee within the State of
16 California, county of Merced. Upon information and belief, Defendant MERCED SNF
17 OPERATIONS, LLC d/b/a GOLDEN MERCED CARE CENTER owns and operates skilled
18 nursing care and rehab service facilities throughout California, including in Merced, California.
19 Plaintiff and the other Class members were employed by Defendants as hourly, non-exempt
20 Employees by Defendants throughout California. Plaintiff worked at Defendants' behest without
21 being paid all wages due and without being provided all required breaks. More specifically, Plaintiff
22 and the other similarly situated Class members were employed by Defendants and (1) shared similar
23 job duties and responsibilities (2) were subjected to the same policies and practices (3) and endured
24 similar violations at the hands of Defendants as the other Employee Class members who served in
25 similar and related positions.

26 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
27 and failed to record accurate time worked by these Employees, failed to pay all wages due and owing
28 at termination or resignation, and provided Plaintiff and the Class members with inaccurate wage

1 statements that prevented them from learning of these unlawful pay practices. Defendants also failed
2 to provide Plaintiff and the Class with lawful meal and rest periods, as Employees were required to
3 remain under Defendants' control and were not provided with the opportunity to take full
4 uninterrupted and duty-free rest periods and meal breaks, as required by the Labor Code and the
5 applicable paragraphs of the IWC Wage Orders.

6 4. Defendant MERCED SNF OPERATIONS, LLC d/b/a GOLDEN MERCED CARE
7 CENTER is a California limited liability company with its principal address listed with the
8 California Secretary of State in Los Angeles, California. "MERCED SNF OPERATIONS, LLC" is
9 listed as the employer on various documents issued to Plaintiff, and upon information and belief
10 Class members, such as Plaintiff's wage statements. GOLDEN MERCED CARE CENTER is a
11 skilled nursing care and rehab facility in Merced, California, and employed Plaintiff and the
12 Employees. Upon information and belief, GOLDEN MERCED CARE CENTER is owned and
13 operated by MERCED SNF OPERATIONS, LLC.

14 5. 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 Merced County where Defendants
20 maintain a facility.

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

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

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

1 10. Defendants required Plaintiff and the Class members to perform work related duties
2 off the clock and to remain under Defendants' control during times when they should have been on
3 break or otherwise off the clock. Plaintiff and, upon information and belief, the other Class
4 members were required to perform work related duties before their scheduled shift start times,
5 including undergoing COVID-related health screenings. Upon information and belief, Defendants
6 failed to compensate Plaintiff and the Class members for the time they were under control of
7 Defendants before their scheduled shift start time.

8 11. Plaintiff and, upon information and belief, the other Class members were also
9 required to work during unpaid meal breaks, including immediately responding to work related
10 calls and questions from coworkers while clocked out for meal periods. Upon information and
11 belief, Defendants failed to compensate Plaintiff and the Class members for the time they were
12 under control of Defendants after clocking out.

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

18 13. By the off the clock work addressed above, the Employees in the Class began
19 incurring overtime hours before the alleged eight hour mark when Defendants began paying any
20 overtime rates of pay, and Defendants thus failed to pay all overtime hours at the correct overtime
21 rate of pay.

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

1 as Plaintiff.

2 15. The failure to pay for all hours worked and underpayment of wages to Plaintiff and
3 the Class members is and has been a direct consequence of Defendants' unlawful compensation
4 policies and practices, which upon information and belief applied uniformly to the Class members
5 working for Defendants throughout California. As a result of the above-described unlawful
6 requirements to work off the clock, the failure to accurately record all hours worked, and the other
7 wage violations they endured at Defendants' hands, Plaintiff and the Class members were not
8 properly paid all wages earned and all wages owed to them by Defendants, including when working
9 more than eight hours in any given day and/or more than forty hours in any given week.

10 16. Therefore, from at least four years prior to the filing of this lawsuit and continuing
11 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
12 hours worked and failing to pay minimum wages for all time worked, as required by California law.
13 Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
14 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
15 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
16 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
17 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

18 17. Additionally, from at least four (4) years prior to the filing of this lawsuit and
19 continuing to the present, Defendants have regularly required Employees to work shifts in excess of
20 five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30)
21 minutes, and shifts in excess of ten (10) hours without providing them with second meal periods of
22 not less than thirty minutes; nor did Defendants pay Employees "premium pay," i.e. one hour of
23 wages at each Employee's effective hourly rate of pay, for each meal period that Defendants failed
24 to provide or deficiently provided. The above described off the clock work contributed to
25 Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Class
26 members, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s).

27 18. Defendants similarly failed to authorize and permit Plaintiff and the employee Class
28 Members to take all required 10-minute rest breaks, as required under the Labor Code and Paragraph

1 12 of the IWC Wage Order(s). Employees were restricted in their ability to take their full ten (10)
2 minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, from at
3 least four years prior to the filing of this lawsuit and continuing to the present, Defendants have
4 consistently failed to provide Employees with paid rest breaks of not less than ten minutes for every
5 work period of four or more consecutive hours, or major fraction thereof, nor did Defendants pay
6 Employees premium pay for each day on which requisite rest breaks were not provided or were
7 deficiently provided.

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

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

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

1 which were automatically presumed by Defendants to have been lawfully provided when they were
2 not. Defendants also failed to accurately record and pay for all regular and overtime hours worked
3 and submitted by Plaintiff and the Class members. Lastly, Employees' wage statements did not
4 include the correct name and address of the legal entity that is the employer in violation of Labor
5 Code § 226(a)(8).

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

14 23. Additionally, Defendants have consistently failed to keep accurate time and wage
15 records as required by California wage-and-hour laws. Likewise, Defendants have had a consistent
16 policy of denying Class Members the right to inspect and receive all of their payroll records,
17 timecards, and personnel records.

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

25 25. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
26 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558,
27 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699, *et seq.*

28 26. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff

1 and the Class members seek injunctive relief, restitution, and disgorgement of all benefits
2 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or
3 fraudulent practices alleged in this Complaint.

4 III. CLASS ALLEGATIONS

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

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

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

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

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

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

26 f. Subclass 6. Payroll Records Subclass. All Class members who were subject to
27 Defendants’ policy and/or practice of failing to keep accurate time and wage records as required by
28 California wage-and-hour laws.

g. Subclass 7. Requested Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to produce employment records upon request as required by California wage-and-hour laws.

h. Subclass 8. 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 9. 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.

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

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

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

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1 **A. Numerosity**

2 31. The potential members of the Class as defined are so numerous that joinder of all the
3 member of the class is impracticable. While the precise number of Class members has not been
4 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
5 time period relevant to this lawsuit employed, at least hundreds of Employees who satisfy the Class
6 definition within the State of California. Plaintiff alleges that Defendants' employment records will
7 provide information as to the number and location of all Class members.

8 **B. Commonality**

9 32. There are questions of law and fact common to the Class that predominate over any
10 questions affecting only individual Class members. The common questions are numerous and
11 substantial and flow from Defendants' uniform policies and/or practices of violating the California
12 Labor Code addressed above. As such, these common questions predominate over individual
13 questions concerning each individual Class Member's showing as to his or her eligibility for
14 recovery or as to the amount of damages. These common questions of law and fact include:

- 15 a. Whether Defendants failed to pay Employees minimum wages;
- 16 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 17 c. Whether Defendants failed to pay Employees overtime as required under Labor Code
18 § 510;
- 19 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC
20 Wage Orders, by failing to provide Employees with requisite meal periods or
21 premium pay in lieu thereof;
- 22 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
23 Orders, by failing to authorize and permit Employees to take requisite rest breaks or
24 provide premium pay in lieu thereof;
- 25 f. Whether Defendants violated Labor Code § 226(a) by providing Employees with
26 inaccurate wage statements;
- 27 g. Whether Defendants failed to keep accurate time and wage records;
- 28 h. Whether Defendants failed to produce employment records upon request;

- 1 i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
- 2 wages and compensation due and owing at the time of termination of employment;
- 3 j. Whether Defendants' conduct was willful;
- 4 k. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
- 5 Orders by failing to maintain accurate records of Class members' earned wages and
- 6 work periods;
- 7 l. Whether Defendants violated Labor Code § 1194 by failing to compensate all
- 8 Employees during the relevant time period for all hours worked, whether regular or
- 9 overtime;
- 10 m. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*;
- 11 n. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 12 o. Whether Employees are entitled to equitable relief pursuant to Business and
- 13 Professions Code § 17200 *et seq.*

14 **C. Typicality**

15 33. The claims of the named plaintiff are typical of those of the other Employees. The

16 Employee Class members all sustained injuries and damages arising out of and caused by

17 Defendants' common course of conduct and uniformly applied policies in violation of statutes, as

18 well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for the

19 off the clock work and meal and rest violations she was required to endure are typical of those of

20 the other Class members.

21 **D. Adequacy of Representation**

22 34. Plaintiff will fairly and adequately represent and protect the interest of the Employee

23 Class members. Counsel who represents Plaintiff and the Employees in the Class are experienced

24 and competent in litigating employment class actions.

25 **E. Superiority of Class Action**

26 35. A class action is superior to other available means for the fair and efficient

27 adjudication of this controversy. Individual joinder of all Employees is not practicable, and

28 questions of law and fact common to all Employees predominate over any questions affecting only

1 individual Employees. Each Employee in the Class has been damaged and is entitled to recovery by
2 reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

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

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

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

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

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

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

1 43. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states:
2 “The minimum wage for employees fixed by the commission is the minimum wage to be paid to
3 employees, and the payment of a less wage than the minimum so fixed is unlawful.” The applicable
4 minimum wage rate fixed by the commission for work during the relevant period is found in the
5 Wage Orders.

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

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

18 46. In committing these violations of the California Labor Code, Defendants
19 inaccurately recorded times that did not reflect their actual hours worked, miscalculated hours or
20 rates or otherwise underpaid the actual time worked by Plaintiff and other members of the Class, as
21 addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of all earned
22 wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
23 Commission requirements and other applicable laws and regulations. As a result of these violations,
24 Defendants also failed to timely pay all wages earned in accordance with California Labor Code §
25 1194.

26 47. California Labor Code § 1194.2 also provides for the following remedies: “In any
27 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
28 minimum wages fixed by an order of the commission, an employee shall be entitled to recover

liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

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

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

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

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

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1 **SECOND CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

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

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

24 56. Defendants, and each of them, have intentionally and improperly under-recorded
25 Employees’ hours, including Plaintiff’s, or required Plaintiff and the Class members to do so, or
26 otherwise caused them to work off the clock to avoid paying Plaintiff and the Class members all
27 earned and owed straight time and overtime wages and other benefits, in violation of the California
28 Labor Code, the California Code of Regulations and the IWC Wage Orders and guidelines set forth

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

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

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

1 Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor Code §
2 558.

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

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

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

23 **THIRD CAUSE OF ACTION**

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

25 **(Against All Defendants)**

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

28 63. Employees regularly worked shifts greater than five (5) hours and in some instances,

1 greater than ten (10) hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC
2 Wage Order, an employer may not employ someone for a shift of more than five (5) hours without
3 providing him or her with a meal period of not less than thirty (30) minutes or for a shift of more
4 than ten (10) hours without providing him or her with a second meal period of not less than thirty
5 (30) minutes.

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

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

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

26 67. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
27 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal to
28 one (1) hour of wages at their effective regular rates of pay for each meal period not provided or

1 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory penalties
2 against the Defendants, and each of them, in a sum as provided by the Labor Code and other statutes
3 and applicable IWC Wage Order paragraphs.

4 **FOURTH CAUSE OF ACTION**

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

6 **(Against All Defendants)**

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

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

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

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

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

28 73. Defendants failed to authorize and permit Plaintiff and the Class members to take

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

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

12 **FIFTH CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE § 226(a)**

14 **(Against All Defendants)**

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

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

24 77. Defendants failed to provide Plaintiff and the similarly situated Employee Class
25 members with accurate itemized wage statements in writing, as required by the Labor Code and
26 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to
27 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
28 including for all overtime and double time hours worked, for deficient meal periods and rest breaks,

1 all of which Defendants knew or reasonably should have known were owed to the Employees, as
2 alleged above. Thus, the wage statements provided to Employees were confusing and required
3 Employees to engage in discovery and refer to outside sources to verify whether their pay was
4 correct and potentially resulting in a miscalculation by the Employees.

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

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

1 identification number other than a social security number. For purposes of Labor Code § 226(e)
2 “promptly and easily determine” means a reasonable person [i.e. an objective standard] would be
3 able to readily ascertain the information without reference to other documents or information.

4 80. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
5 are required “to pay each employee, on the established payday for the period involved, not less than
6 the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor Code §
7 1198, “[t]he employment of any employee for longer hours than those fixed by the order or under
8 conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members may
9 therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph 4(B) of
10 the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC
11 Wage Orders.

12 81. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code §
13 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
14 Class suffered injuries, including among other things confusion over whether they received all
15 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
16 them to make mathematical computations to analyze whether the wages paid in fact compensated
17 them correctly for all hours worked.

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

24 **SIXTH CAUSE OF ACTION**

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

26 **(Against All Defendants)**

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

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

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

11 SEVENTH CAUSE OF ACTION
12 FAILURE TO PRODUCE REQUESTED EMPLOYMENT RECORDS UNDER LABOR
13 CODE §§ 226 and 1198
14 (Against All Defendants)

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

17 88. Pursuant to California Labor Code § 226, current and former employees have the
18 right to inspect or receive a copy of their records pertaining to their employment, upon reasonable
19 request to their employer. Under this statute, an employer that receives a request to inspect or receive
20 a copy of records pertaining to a current or former employee must comply with the request as soon
21 as practicable, but no later than twenty-one calendar days from the date of the request.

89. Pursuant to California Labor Code § 1198.5(a), every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee. Under this statute, upon written request from a current or former employee or his or her representative, an employer must make the contents of those personnel records available for inspection or provide a copy of the personnel records to the current or former employee, or his or her representative, not later than thirty calendar days from the date the employer receives the written

1 request, subject to some limited exceptions. Failure to comply with these requests allows for a civil
2 penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and 226(f).

3 90. Plaintiff sent written requests through her counsel to Defendants for her payroll
4 records, timecards, and personnel records. However, Defendant did not provide the requested
5 records within twenty-one calendar days from the date of the request.

6 91. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely
7 produce the required records requested by Plaintiff.

8 92. On information and belief, Defendants' failure to provide Plaintiff with all of her
9 requested employment records is not an isolated incident, but was instead consistent with
10 Defendants' policy and practice that applied to Plaintiff and Employees.

11 93. Pursuant to California Labor Code § 1198.5, Plaintiff and Class Members are entitled
12 to a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and costs.

13 94. Pursuant to California Labor Code § 226(f), Plaintiff is entitled to a penalty of seven
14 hundred fifty dollars (\$750) from Defendants and attorneys' fees and cost, and the other Class
15 Members similarly situated are similarly entitled.

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

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

21 96. Plaintiff and numerous Class members are no longer employed by Defendants; they
22 either quit Defendants' employ or were fired therefrom.

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

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

27 99. Defendants failed to pay Plaintiff and the Class members without abatement, all
28 wages as defined by applicable California law. Among other things, these Employees were not paid

1 all regular and overtime wages, including by Defendants failing to pay for all hours worked or
2 requiring off the clock work or by unlawfully under-recording time entries to the detriment of
3 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and
4 rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the
5 required time was willful within the meaning of Labor Code § 203.

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

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

22 **NINTH CAUSE OF ACTION**

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

24 **(Against All Defendants)**

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

27 103. Plaintiff, on behalf of herself, the Employees in the Class, and the general public,
28 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of

1 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful
2 to Employees and the general public. Plaintiff seeks to enforce important rights affecting the public
3 interest within the meaning of Code of Civil Procedure § 1021.5.

4 104. Plaintiff is a “person” within the meaning of Business & Professions Code
5 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
6 relief, restitution, and other appropriate equitable relief.

7 105. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
8 practices. By the conduct alleged herein, Defendants’ practices were deceptive and fraudulent in
9 that Defendants’ policy and practice failed to provide the required amount of compensation for
10 missed meal and rest breaks, and failed to adequately compensate Plaintiff and Class members for
11 all hours worked, due to systematic business practices as alleged herein that cannot be justified,
12 pursuant to the applicable California Labor Code and Industrial Welfare Commission requirements
13 in violation of California Business and Professions Code §§ 17200, *et seq.*, and for which this Court
14 should issue injunctive and equitable relief, pursuant to California Business & Professions Code §
15 17203, including restitution of wages wrongfully withheld.

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

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

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

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

7 110. By the conduct alleged herein, Defendants have engaged and continue to engage in a
8 business practice which violates California and federal law, including but not limited to, the
9 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
10 Code including Sections 204, 221, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, and 1198 for
11 which this Court should issue declaratory and other equitable relief pursuant to California Business
12 & Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to
13 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

22 **TENTH CAUSE OF ACTION**

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

24 **(Against All Defendants)**

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

27 114. Plaintiff and Employees are aggrieved employees as defined under Labor Code §
28 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the

1 alleged violators, Defendants.

2 115. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'
3 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the penalty
4 provisions, without limitation, based on the following California Labor Code sections: 201, 202,
5 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2,
6 1197, 1198, 1199, 2698, and 2699, *et seq.*

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

9 117. Employees also seek any and all penalties and remedies set forth in Labor Code §
10 558, which states:

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

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

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

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

1 that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

2 119. Plaintiff has exhausted her administrative remedy by sending a certified letter to the
3 LWDA and Defendants postmarked on May 17, 2024. The LWDA has not provided notice of its
4 intent to investigate the alleged violations within 65 calendar days of the postmark date of the letters.

5 **IV. RELIEF REQUESTED**

6 WHEREFORE, Plaintiff prays for the following relief:

- 7 1. For an order certifying this action as a class action;
- 8 2. For compensatory damages in the amount of the unpaid minimum wages for work
9 performed by Employees and unpaid overtime compensation from at least four (4) years prior to the
10 filing of this action, as may be proven;
- 11 3. For liquidated damages in the amount equal to the unpaid minimum wage and interest
12 thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 13 4. For compensatory damages in the amount of all unpaid wages, including overtime
14 and double-time pay, as may be proven;
- 15 5. For compensatory damages in the amount of the hourly wage made by Employees
16 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
17 years prior to the filing of this action, as may be proven;
- 18 6. For compensatory damages in the amount of the hourly wage made by Employees
19 for each day requisite rest breaks were not provided or were deficiently provided where no premium
20 pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
- 21 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 22 8. For penalties pursuant to Labor Code § 226.3, as may be proven;
- 23 9. For penalties pursuant to Labor Code §§ 1174.5 and 1198.5, as may be proven;
- 24 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired
25 in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 26 11. For restitution for unfair competition pursuant to Business & Professions Code
27 § 17200 *et seq.*, including disgorgement or profits, as may be proven;
- 28 12. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;

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

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

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

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

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

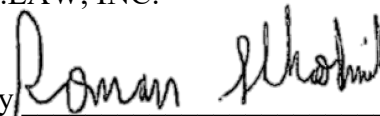
8 18. For an award of attorneys' fees; and

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

10
11 DATED: July 22, 2024

D.LAW, INC.

12
13 By



Emil Davtyan

David Yeremian

Roman Shkodnik

Attorneys for Plaintiff

MONIQUE MATHEWS

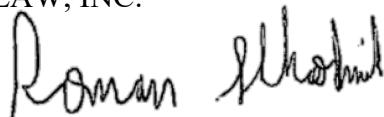
and the putative class

DEMAND FOR JURY TRIAL

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

DATED: July 22, 2024

D.LAW, INC.

By 

Emil Davtyan
David Yeremian
Roman Shkodnik
Attorneys for Plaintiff
MONIQUE MATHEWS
and the putative class

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

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

On July 22, 2024, I served the foregoing: **FIRST AMENDED CLASS ACTION COMPLAINT** on Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Laura K. Sitar

lsitar@pleisslaw.com

Andrea R. Sitar

asitar@pleisslaw.com

Email: service@pleisslaw.com

PLEISS SITAR MCGRATH GATES & AJELLO

2875 Michelle Drive, Suite 150

Irvine, CA 92606

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

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

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

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

Executed on July 22, 2024, at Glendale, California.


Natalia Bermudes