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on behalf of herself and all others similarly situated

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Superior Court of California

County of Fresno

By: Yazmin Colin, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

DAISY RAMIREZ, an individual, on behalf
of herself and others similarly situated,

Plaintiff,

vs.

BEHAVIORAL INTERVENTION
ASSOCIATION, a California corporation,
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 24CEGC01917

CLASS ACTION

Assigned for All Purposes To:

Hon. D. Tyler Tharpe

Dept.: 501

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for All Hours Worked;
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 Reporting Time Under 8 CCR § 11090(5);
6. Violation of Labor Code § 226(a) and 226.2;
7. Violation of Labor Code § 221;
8. Violation of Labor Code § 204;
9. Violation of Labor Code § 203;
10. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
11. Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802;
12. Violation of Business & Professions Code § 17200 *et seq.*; and
13. Penalties under PAGA Labor Code § 2698.

DEMAND FOR JURY TRIAL

Original Complaint Filed: May 3, 2024

Trial Date: None set.

1 Plaintiff DAISY RAMIREZ (hereinafter “Plaintiff”), on behalf of herself and all other
2 similarly situated non-exempt, hourly employees employed by Defendants in California during the
3 relevant period (collectively, “Employees”; individually, “Employee”) complains of Defendants as
4 follows:

5 **INTRODUCTION**

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

14 2. Plaintiff worked as an hourly “Clinical Support Assistant” at one of Defendants’
15 facilities and locations, and Defendants operate facilities upon information and belief in Fresno,
16 Clovis, Oakland, San Mateo, Monterey, and Salinas, California. She and the other Class members
17 were employed by Defendants as non-exempt, hourly clinical employees at Defendants’ locations
18 and facilities throughout California, including in positions related to providing applied behavior
19 analysis (“ABA”) services to children and adolescents. Plaintiff worked at Defendants’ behest
20 without being paid all wages due and without being provided all required breaks. More
21 specifically, Plaintiff and the other similarly situated Class members were employed by
22 Defendants and shared similar job duties and responsibilities, were subjected to the same policies
23 and practices, and endured similar violations at the hands of Defendants as the other Employees
24 who served in similar and related positions.

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

1 prevented them from learning of these unlawful pay practices. Defendants also failed to provide
2 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain
3 under Defendants' control and were not provided with the opportunity to take full uninterrupted,
4 timely, 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 BEHAVIORAL INTERVENTION ASSOCIATION ("BIA") is a
7 California corporation that upon information and belief also does business in California as BIA
8 and lists its principal address with the California Secretary of State in Oakland, California. It lists
9 its type of business as "AUTISM TREATMENT." Defendant BEHAVIORAL INTERVENTION
10 ASSOCIATION is listed as the employer on the wage statements issued to Plaintiff by Defendants
11 on a bi-weekly basis, and upon information and belief to other Class members, with the same
12 California address. Upon information and belief, BIA operates various clinics and facilities in
13 California, including the Fresno, California facility where Plaintiff worked. The website for BIA
14 states: "BIA provides applied behavior analysis (ABA) services to children and adolescents ages
15 18 months to 18 years of age. Services are offered via a hybrid program, combining clinic based,
16 in home and community settings. Additionally, BIA offers social skills groups and parent training
17 workshops." The website further states they have been "providing ABA in California for the last
18 30 years!"

19 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
20 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
21 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
22 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
23 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
24 obligations and liabilities giving rise to this lawsuit occurred at least in part in Fresno County,
25 where Defendants operate and provide clinical services to California customers.

26 6. The true names and capacities, whether individual, corporate, associate, or
27 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
28 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of

1 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
2 designated herein as Does 1 through 50, inclusive, and each of them, is legally responsible in some
3 manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this
4 Complaint to reflect the true names and capacities of the Defendants designated herein as Does 1
5 through 50 when their identities become known.

6 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
7 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
8 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
9 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
10 all respects as the employers or joint employers of Employees. Defendants, and each of them,
11 exercised control over the wages, hours or working conditions of Employees, created and
12 implemented the policies and practices that governed the employment of Plaintiff and the Class
13 members and dictated their job duties and responsibilities, or otherwise suffered or permitted
14 Plaintiff and the other Employee Class members to work, or engaged, thereby creating a common
15 law employment relationship, with the Employee Class members. Therefore, Defendants, and each
16 of them, employed or jointly employed the Employee Class members.

17 **FACTUAL BACKGROUND**

18 8. The Employees who comprise the Class, including Plaintiff, are non-exempt
19 employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare
20 Commission ("IWC"). During the period of four years prior to the filing of this action through its
21 resolution, Plaintiff and the Class members were either not paid by Defendants for all hours
22 worked were not paid at the appropriate minimum, regular and overtime rates, including for meal
23 period and rest break premium payments. Plaintiff also contends that Defendants failed to pay
24 Plaintiff and the Class members all wages due and owing, including by miscalculating wages
25 owed and by requiring off the clock work, failing to provide meal and rest breaks, and failing to
26 furnish accurate wage statements and timely pay all wages owed, all in violation of various
27 provisions of the California Labor Code and applicable paragraphs of the IWC Wage Orders.

1 9. During the course of Plaintiff and the Class members' employment with
2 Defendants they were not paid all wages they were owed, including for all work performed
3 (resulting in "off the clock" work) and for all their overtime hours worked, or were not paid at the
4 correct rates. This has resulted in systematic and ongoing violations of the California Labor Code
5 and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-
6 exempt, hourly clinical employees based out of Defendants' facilities in California.

7 10. Plaintiff worked as an "Clinical Support Assistant" at one of Defendants' clinics in
8 Fresno, California. Her duties included attending to juvenile patients if any of the Behavioral
9 Technicians called in sick or were on a break, providing ABA to children with autism, and
10 preparing ABA materials for the Defendants and their patients. Plaintiff worked both full and part
11 time during her tenure with the Defendants. Plaintiff, when working full time, generally worked
12 40 hours per week, five shifts per week. Plaintiff's scheduled hours were generally from 8:00
13 a.m. through 6:00 p.m. Plaintiff was required to, and did supply her own mobile telephone to
14 perform her duties.

15 11. During the latter half of Plaintiff's employment, Defendants required that
16 Employees access a website on their personal cell phones, a timekeeping/patient billing
17 application known as "Central Reach," which purported to record employees' exact shift start/end
18 time and meal periods. However, this timekeeping system was designed as a scheduling tool so
19 that the parents of the young patients could see their child's schedule. The time slots were already
20 entered into the system and Plaintiff and Class members would indicate on Central Reach that
21 they were present with a patient during a given session. Typically there were two sessions per
22 day, a morning session, and an afternoon session. There was a pre-allocated "meal period" on
23 Central Reach scheduled for 12:30 p.m. to 1:00 p.m. – which was basically a "blank"
24 appointment time. Every other week, Plaintiff and Class Members would submit their time sheets
25 by logging onto the website and "converting" the time they attended to patients to their time
26 sheet. On information and belief, the time entries recorded by Employees and Defendants'
27 managers were therefore rounded or were otherwise altered to reflect scheduled hours rather than
28 actual hours worked.

1 12. In late January of 2023, Defendants implemented an additional time keeping
2 procedure and requirements. Employees were required to scan a QR code onto an iPad to indicate
3 when they arrived for the beginning of their shift and left at the end of their shift. Plaintiff and
4 class members would many times have to wait for a couple minutes to scan their QR code and
5 were not paid for this waiting time. Plaintiff and Class Members were also required to clock out
6 and had to remain at Defendants' workplace and wait for about 10 minutes for the supervisors to
7 leave before they could "close up" the office.

8 13. Moreover, Plaintiff and Class Members were required to download the Group
9 Meet App on their personal mobile phones so they could receive and respond to messages from
10 management and other employees both on and off the clock.

11 14. Defendants' inconsistent timekeeping systems were inaccurate, including because
12 they failed to account for the minutes that Employees spent waiting to record their time and the
13 other inefficiencies addressed above. These were minutes that Employees were required to
14 remain under Defendants' control and thus were compensable. However, Defendants did not
15 compensate Employees for these minutes because they were not recorded in their timekeeping
16 systems. Accordingly, Defendants failed to pay Employees for all their hours worked.

17 15. Plaintiff and the Class members were also not paid appropriate wages for the time
18 required to comply with other requirements imposed upon them, which they had to complete
19 while off-duty and without compensation. Plaintiff and the Class members were sometimes asked
20 to work shifts over eight hours in a day and to work over forty hours in a work week, but they
21 were not paid at the appropriate overtime rate for all such hours, including by being required to
22 perform work duties and tasks without pay and while off-the-clock, in violation of the California
23 Labor Code.

24 16. Defendants did this, upon information and belief, in connection with other
25 Employees in a concerted effort to underpay wages to Plaintiff and the Class members.
26 Employees were therefore not paid for all their hours worked at the required minimum, overtime,
27 and double time wage rates due to Defendants' policy and practice of requiring work off the
28 clock and without pay or failing to pay for all hours worked at the correct rates of pay. With work

1 shifts generally scheduled for eight hours or more, this unpaid off the clock work resulted in
2 Plaintiff and the Class members working past eight hours on a shift, which required that they be
3 paid at the correct overtime rate of 1.5 times their regular rate. Defendants thus systematically
4 underpaid Plaintiff and the Class members by failing to pay them at the required overtime rates
5 for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a
6 day at the required double time rate. Upon information and belief, the Class members were bound
7 by similar scheduling and work policies which Defendants required them to follow and endured
8 similar violations at Defendants' hands as Plaintiff.

9 17. Defendants also failed to pay reporting time pay to Plaintiff and Class members. It
10 was common practice for Employees to arrive at the facilities and then, after two hours of
11 working, to be sent home by their supervisors. Defendants failed to pay Employees for half of
12 their usual or scheduled day's work or four hours at the correct pay rate.

13 18. Defendants have either failed to maintain timekeeping records for Plaintiff that
14 would permit Plaintiff to discover the nature and extent of the underpayment of wages, the off the
15 clock work Defendants required, and the actual hours worked, or have otherwise declined to
16 produce them to Plaintiff in response to a timely and lawful request. By failing to pay for all
17 hours worked, Defendants have committed knowing and intentional ongoing violations of the
18 record keeping requirements under the Labor Code §§ 226 and 1174.

19 19. As a result of the above-described unlawful requirements to work off the clock, to
20 work without, and the failure to accurately record all hours worked and unlawful rounding, and
21 the other wage violations they endured at Defendants' hands, Plaintiff and the Class members
22 were not properly paid all wages earned and all wages owed to them by Defendants, including
23 when working more than eight hours in any given day and/or more than forty hours in any given
24 week. As a result of Defendants' unlawful policies and practices, Plaintiff and Class members
25 incurred overtime hours worked for which they were not adequately and completely
26 compensated, in addition to the hours they were required to work off the clock at their regular
27 rates.

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

10 21. 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 as required by California law. Also, from at least
13 four years prior to the filing of this lawsuit and continuing to the present, Defendants had a
14 consistent policy or practice of failing to pay Employees overtime compensation at premium
15 overtime rates for all hours worked in excess of eight hours a day and/or forty hours a week, and
16 double-time rates for all hours worked in excess of twelve hours a day, in violation of Labor Code
17 § 510 and the corresponding sections of IWC Wage Orders. Upon information and belief,
18 Defendants also miscalculated and therefore underpaid any overtime they paid during these pay
19 periods by failing to include all forms of remuneration, including performance bonuses and shift
20 differentials and the like, in the regular rate used to calculate and pay overtime.

21 22. Defendants also failed to provide Plaintiff and the Class members with their
22 required meal periods the at least two ten-minute rest breaks required for scheduled shifts of eight
23 hours. Demanding workloads contributed to Defendants' common policy of failing to provide
24 lawful meal periods to Plaintiff and the Class members, as required under the Labor Code and
25 Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically failed to authorize
26 and permit Plaintiff and the employee Class Members to take all required 10-minute rest breaks,
27 as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

28

1 23. More specifically, Plaintiff worked shifts that entitled her to at least one meal
2 period, but Defendants' managers required Plaintiff and the Class members to prioritize work
3 over taking proper meal periods. In fact, Defendants made no effort to even schedule or otherwise
4 account for time for Plaintiff and the Class members to use for duty-free, net thirty minute meal
5 periods. To the extent Defendants required Plaintiff to work over ten hours on a work shift,
6 Defendants also failed to provide second meal periods and Defendants have produced no
7 evidence of premium wage payments for meal period violations under Labor Code 226.7. To the
8 extent Defendants have paid any such premiums, upon information and belief they failed to
9 include all forms of remuneration, in the regular rate at which Defendants paid the premiums.

10 24. Therefore, meal period violations systematically occurred throughout all of
11 Plaintiff's work shifts as Defendants failed to provide a lawful meal period or penalty payment. To
12 the extent Defendants ever did pay Plaintiff a meal period premium, they failed to include all
13 forms of remuneration beyond hourly wages in the regular hourly rate used to pay the one-hour
14 premium payment. Upon information and belief, the other Class members were subjected to
15 similar unlawful policies and practices and endured similar violations as Plaintiff.

16 25. Defendants thus failed to provide all the legally required unpaid, off-duty meal
17 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
18 members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
19 members were required to perform work as ordered by Defendants for more than five hours during
20 a shift without receiving compliant meal periods. Additionally, as addressed above, Defendants
21 followed a practice of requiring off the clock work and rounding and time shaving in a manner
22 that would impact when Employees were to receive meal periods and rest breaks and required
23 them to respond to work calls and inquiries and other demands during breaks, thus leading to
24 further violations.

25 26. Defendants appear to recognize and accept their unlawful policies, as Plaintiff's
26 wage statements evidence Defendant paying meal period premium payments under Labor Code §
27 226.7 to Plaintiff. As addressed above, Defendants committed similar and ongoing violations by
28 failing to include all forms of remuneration, in the regular hourly rate at which they paid the

1 premiums to Plaintiff and Class members.

2 27. Defendants thus followed uniformly applied policies of not providing all required
3 meal periods to their Employees. Meal periods were often not properly provided, as work
4 demands impermissibly shortened their breaks. Even when Plaintiff and the Class members were
5 able to take a meal period, it was generally interrupted by work duties or was taken after the fifth
6 hour of work. Additionally, as addressed above, Defendants followed a practice of requiring off
7 the clock work in a manner that would impact when Employees were to receive meal periods and
8 rest breaks, thus leading to further violations.

9 28. As a result, Defendants' failure to provide Plaintiff and the Class members with all
10 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
11 periods is and will be evidenced by Defendants' business records, or lack thereof. Therefore, for at
12 least four years prior to the filing of this action and through to the present, Plaintiff and the Class
13 members were unable to take off-duty breaks or were otherwise not provided with the opportunity
14 to take required breaks as required under the Labor Code and Wage Orders due to Defendants'
15 policies and practices. On the occasions when Plaintiff and the Class members were provided with
16 a meal period, it was often untimely or interrupted, or was impermissibly shortened, and
17 Employees were not provided with one hour's wages in lieu thereof. Meal period violations thus
18 occurred in one or more of the following manners:

- 19 (a) Class members were not provided full thirty-minute duty free meal periods
20 for work days in excess of five hours and were not compensated one hour's
21 wages in lieu thereof, all in violation of, among others, Labor Code §§
22 226.7, 512, and the applicable Industrial Welfare Commission Wage
23 Order(s);
- 24 (b) Class members were not provided second full thirty-minute duty free meal
25 periods for work days in excess of ten hours;
- 26 (c) Class members were required to work through at least part of their daily
27 meal period(s);
- 28

- 1 (d) Meal periods were provided after five hours of continuous work during a
2 shift; and
- 3 (e) Class members were restricted in their ability to take a full thirty-minute
4 meal period and were not permitted to leave their work premises during
5 meal periods and were otherwise required to remain under Defendants'
6 control during meal periods.

7 29. Similar violations resulted from Defendants' failure to authorize and permit
8 Plaintiff and the Class members to take duty-free, net ten-minute rest breaks for every four hours
9 of shift work, or major fraction thereof. Plaintiff and the other similarly situated Class members
10 were either not authorized permitted the opportunity to take a rest break, or were required to
11 remain under Defendants' control and respond to instructions from management and job demands
12 if and when they even attempted to take one. Upon information and belief, Defendants thus also
13 failed to authorize and permit employees to leave the premises during rest breaks, evidencing
14 Defendants' policy and practice of requiring Plaintiff and the Class members to remain under
15 their control during required off-duty rest break times.

16 30. Defendants thus failed to authorize and permit duty-free ten minute rest breaks as
17 required under the Labor Code and IWC Wage Orders. In fact, Defendants made no effort to even
18 schedule or otherwise account for time for Plaintiff and the Class members to use for duty-free,
19 net ten minute rest breaks. This common and unlawful policy uniformly applied to the Employees
20 during the relevant period, meaning Defendants' rest break policy was not to schedule or
21 otherwise authorize and permit them. Plaintiff and the Class members worked eight to twelve
22 hours on an average shift, and were required to receive at least two rest breaks or three rest breaks
23 on shifts over ten hours. Given the work demands, understaffing, and pressure from Defendants'
24 management, Plaintiff and the Class members were compelled to not take rest breaks despite
25 working extended shifts. Defendants have produced no evidence of any payments for rest break
26 violations under Labor Code § 226.7. To the extent Defendants have paid any such premiums,
27 upon information and belief they failed to include all forms of remuneration in the regular rate at
28 which Defendants paid the premium.

1 31. Defendants' uniformly applied policies and practices thus resulted in untimely and
2 shortened or on-duty rest breaks when they were authorized and permitted. Plaintiff and the Class
3 members worked shifts of at least eight hours, which required at least two rest breaks, and often
4 worked shifts over ten hours, which required at least three rest breaks. Even on the occasions
5 when Defendants authorized and permitted Plaintiff to take a first rest break, she was not
6 permitted to take a second or a third break, and those that were provided were often late and
7 generally interrupted by job duties and requirements.

8 32. During rest periods, employers must relieve employees of all duties and relinquish
9 control over how employees spend their time. Plaintiff and the Class members were and are under
10 Defendants' control when they are working through rest breaks. Defendants have also provided
11 either impermissibly shortened or untimely meal and rest breaks to Plaintiff and the Class
12 members. Plaintiff and the Employees in the Class were thus not authorized and permitted to take
13 lawful rest periods, were systematically required by Defendants to work through or during breaks,
14 and were not provided with one hour's wages in lieu thereof. Plaintiff and the Class members
15 were also required to remain on-duty during breaks or portions of their breaks, thus making them
16 either untimely or shortened and on-duty, and they were also prevented from leaving the premises
17 and otherwise remain under Defendants' control during rest breaks under Defendants' uniformly
18 applied policies and practices. Rest period violations therefore arose in one or more of the
19 following manners:

- 20 (a) Class members were required to work without being provided a minimum
21 ten minute rest period for every four hours or major fraction thereof worked
22 and were not compensated one hour of pay at their regular rate of
23 compensation for each workday that a rest period was not provided, and to
24 the extent Defendants paid any premiums, they failed to include all forms of
25 remuneration in the regular rate used to calculate and pay them.
- 26 (b) Class members were not authorized and permitted to take timely rest periods
27 for every four hours worked, or major fraction thereof;
- 28 (c) Class members were not authorized and permitted to take any cooldown

1 periods to prevent heat illness; and

2 (d) Class members were required to remain on duty and under Defendants'
3 control during rest periods or otherwise had their rest periods interrupted by
4 work demands.

5 33. From at least four years prior to the filing of this lawsuit and continuing to the
6 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
7 deducting the Employees' earned wages, and including by requiring off the clock work during
8 breaks and before and after work shifts and by miscalculating the regular rate and accordingly
9 underpaying overtime wages and meal and rest break premiums. By not compensating Employees
10 for all hours worked at the correct rates, Defendants unlawfully deducted wages earned by and
11 owed to Plaintiff and the Class members, in violation of Labor Code § 221.

12 34. Upon information and belief, Defendants also failed to provide Employees such as
13 Plaintiff at the time of their employment and thereafter with written notice complying with all the
14 requirements of Labor Code § 2810.5, which provides that: "At the time of hiring, an employer
15 shall provide to each employee a written notice, in the language the employer normally uses to
16 communicate employment-related information to the employee, containing" specific required
17 information. Upon information and belief, Defendants failed to provide this information to the
18 Class members as required under Labor Code § 2810.5. Defendants were required to provide
19 Plaintiff and the aggrieved employee Class members certain specific information upon hiring
20 pursuant to California Labor Code § 2810.5. Defendants failed to provide Plaintiff with any such
21 information when she was hired, or have failed to produce it, and upon information and belief
22 Defendants committed similar violations in connection with similarly situated and aggrieved
23 Class members.

24 35. As a result of these illegal policies and practices, Defendants also engaged in and
25 enforced the following additional unlawful practices and policies against Plaintiff and the Class
26 members she seeks to represent:

27 (a) failing to pay all wages owed to Class members who either were discharged,
28 laid off, or resigned in accordance with the requirements of Labor Code §§

201, 202, 203;

- (b) failing to pay all wages owed to the Class members twice monthly in accordance with the requirements of Labor Code § 204;
- (c) failing to pay Class members all wages owed, including all meal and rest period premium wages, and failing to pay them at the regular rate of compensation;
- (d) failing to maintain accurate records of Class members' hours worked and earned wages and meal periods in violation of Labor Code §§ 226 and 1174(d) and section 7 of the applicable IWC Wage Orders; and
- (e) failing to produce timekeeping records in response to Plaintiff's timely and lawful request to receive them under these authorities.

36. Defendants have also failed to provide Class members with proper wage statements, as required by California wage-and-hour laws. Wage statements issued by Defendants included payments corresponding to "Admin-Clinical 1" which bear no corresponding rate, hours, or formula indicating how they were calculated. These sporadic payments appear randomly throughout wage statements issued to Plaintiff during her tenure and made it difficult for her to discern the accuracy of her compensation.

37. Moreover, Defendants have also consistently failed to provide Class members with timely, accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws, the requirement of off the clock work, the failure to pay all overtime and double time wages owed and failure to pay them at the appropriate premium rates, and the failure to pay premium wages for unprovided or otherwise unlawful meal and rest breaks, or by miscalculating any overtime or meal period or rest break premium wages and by the systematic and unlawful deductions Defendants took from Employee wages. Defendants have also made it difficult to account with precision for the unlawfully withheld wages and meal and rest period compensation owed to Plaintiff and the Class, during the liability period, including because they did not calculate the regular rate of pay correctly when paying overtime or meal period premiums and because they did not implement and preserve a record-keeping method as required for non-exempt employees

1 by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage
2 Orders. Upon information and belief, time clock punches were not maintained or were not
3 accurately maintained for work shifts and meal periods. Defendants also failed to accurately
4 record and pay for all regular and overtime hours worked and submitted by Plaintiff and the Class
5 members, including by failing to pay all overtime hours at the correctly calculated overtime
6 premium rate.

7 38. Defendants also provided Plaintiff and the Class members with wage statements
8 that failed to report all hours worked accurately and applicable hourly rates for all hours worked.
9 For the same reasons as explained above, Plaintiff and the Class members were provided with
10 unlawful wage statements that failed to reflect all wages earned and all hours worked and failed to
11 pay for all overtime hours or failed to pay overtime wages at the correct overtime premium rate,
12 and Defendants miscalculated meal and rest break premiums, and sick time if and when they did
13 pay them. Defendants followed this unlawful policy and practice even though both Plaintiff and
14 Defendants were aware that Plaintiff and the Class members worked more total hours than were
15 reflected on the wage statements, including overtime hours, and were underpaid by regular rate
16 miscalculation. Plaintiff and the Employees in the Class were unable to discern from their wage
17 statements alone the actual hours they worked in total during a pay period and the rates they were
18 paid for those hours worked.

19 39. Defendants have thus also failed to comply with Labor Code § 226(a) by
20 inaccurately reporting total hours worked and total wages earned by Plaintiff and the Class
21 members, along with the appropriate applicable rates, among others requirements. Plaintiff and
22 Class members are therefore entitled to penalties not to exceed \$4,000.00 for each employee
23 pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the
24 applicable California IWC Wage Orders by failing to maintain time records showing when the
25 employee begins and ends each work period, meal periods, and wages earned pursuant to Labor
26 Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from
27 payment of wages and accurately reporting total hours worked.

1 40. Defendants also required Plaintiff and the Class members to work hours off the
2 clock for which they were not compensated. They were required to endure off the clock work
3 addressed above during interrupted or otherwise on-duty meal and rest periods and were not
4 provided with sick pay and supplemental sick leave and were subjected to systematic off the clock
5 work. Defendants also failed to pay all overtime premium wages owed for work conducted on a
6 work shift and a workday or failed to pay it at the correct rate, as addressed above. Therefore,
7 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to
8 Plaintiff and other similarly situated Employees at the time of their termination or within seventy-
9 two hours of their resignation, as required by California wage-and-hour laws, including Labor
10 Code § 203.

11 41. Additionally, from at least four years prior to the filing of this lawsuit and
12 continuing to the present, Defendants have regularly required Plaintiff and the Class members to
13 incur necessary business expenses in the course of performing their required job duties without
14 reimbursement. These included the cell phone-related expenses Plaintiff incurred in responding to
15 calls from management, the use of her cell phone to record her time entries on the Central Reach
16 website, and to respond to messages from supervisors and other employees on the Group Meet
17 App. Plaintiff and the Class members must be reimbursed for these necessary business expenses
18 under Labor Code § 2802, and Defendants systematically failed to do so.

19 42. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
20 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.2,
21 226.4, 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185,
22 1194, 1194.2 1197, 1198, 1198.5, 1199, 2802, 2810.5, 2698 et. seq., and California Code of
23 Regulations, Title 8, section 11000 *et seq.*

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

CLASS ALLEGATIONS

44. 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 (or “the Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as determined by the Court (“the Class Period”), and who have been employed as non-exempt, hourly employees within the State of California.” This includes all clinical staff employees and those in similar and related positions. Further, Plaintiff seeks to represent the Subclasses composed of and defined as follows:

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

b. Subclass 2. Wages and Overtime Subclass. All Class members who were not compensated for all hours worked for 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. Reporting Time Pay Subclass: All Class members who were not compensated reporting time pay.

f. Subclass 6. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements including the failure to include separate rest and recovery pay on wage statements.

g. Subclass 7. Unauthorized Deductions from Wages Subclass. All Class members who were subject to Defendants’ policy and/or practice of deducting wages earned from their pay,

including by requiring off the clock work.

h. Subclass 8. Failure to Timely Pay Wages Twice Monthly Subclass. All Class members who were subject to Defendants' policy and practice of not timely paying all wages earned when they were due and payable at least twice monthly.

i. 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.

j. Subclass 10. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

k. Subclass 11. 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.

l. Subclass 12. 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.

45. 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.

46. 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 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.

47. 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 in California.

A. Numerosity

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

B. Commonality

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

- a. Whether Defendants failed to pay Employees minimum wages for all hours worked;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants paid reporting time pay under the applicable wage order and 8 CCR § 11090(5);
- e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or

premium pay in lieu thereof;

- f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Employees to take requisite rest breaks or cooldown periods or provide premium pay in lieu thereof;
- g. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements and wage statements that omitted many of the Section 226(a) requirements.
- h. Whether Defendants violated Labor Code § 226.2 by failing to separately compensate Employees for their rest periods;
- i. Whether Defendants violated Labor Code § 221;
- j. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- k. Whether Defendants' conduct was willful;
- l. Whether Defendants violated Labor Code § 226 and § 1174 and § 1198 and the IWC Wage Orders by failing to maintain accurate records of Class members' earned wages and work periods;
- m. Whether Defendants violated Labor Code § 1194 by failing to compensate during the relevant time period for all regular and overtime hours worked by Employees;
- n. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;
- o. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business expenses incurred by Employees;
- p. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not providing required sick days and COVID-19 supplemental sick leave;
- q. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- r. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- s. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

1 **C. Typicality**

2 50. The claims of the named Plaintiff are typical of those of the other Employees. The
3 Employee Class members all sustained injuries and damages arising out of and caused by
4 Defendants' common course of conduct and uniformly applied policies in violation of statutes, as
5 well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for
6 the off the clock work and meal and rest violations they were required to endure are typical of
7 those of the other Class members.

8 **D. Adequacy of Representation**

9 51. Plaintiff will fairly and adequately represent and protect the interest of the
10 Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are
11 experienced and competent in litigating employment class actions.

12 **E. Superiority of Class Action**

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

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

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

8 55. Defendants, as prospective and actual employers of the Employees in the Class,
9 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
10 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
11 Employees as well as the effect of any alleged arbitration agreements that may have been forced
12 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
13 and policies, most notably intentionally refusing to pay for all hours actually worked which should
14 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
15 agreements and policies and practices on the Employees and Class as a whole.

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

23 **FIRST CAUSE OF ACTION**
24 **FAILURE TO PAY MINIMUM WAGES**
25 **(Against All Defendants)**

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

1 58. Defendants failed to pay Employees minimum wages for all hours worked.
2 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
3 would work hours and not receive wages, including as alleged above in connection with off the
4 clock work, including all the time required to remain on duty and under Defendants' control
5 during breaks and due to the work demands placed upon them by Defendants' management and
6 by paying what should have been overtime hours as regular hours. Defendants' uniformly applied
7 policies required systematic off the clock work and underpayment of all wages owed to
8 Employees over a period of time, while benefiting Defendants. During the relevant time period,
9 Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class members,
10 including by requiring systematic off the clock. To the extent any local wage ordinances were
11 also applicable to paying the employees an hourly rate above the minimum wage rate,
12 Defendants failed to comply with the local wage ordinances. Defendants' uniform pattern of
13 unlawful wage and hour practices manifested, without limitation, applicable to the Class as a
14 whole, as a result of implementing a uniform policy and practice that denied accurate
15 compensation to Plaintiff and the other members of the Class as to minimum wage pay.

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

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

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

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

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

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

19 64. As a direct result of Defendants' unlawful wage practices as alleged herein,
20 Plaintiff and the other members of the Class did not receive the correct minimum wage
21 compensation for their time worked for Defendants, including by not receiving wages for all rest
22 periods.

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

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

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

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

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

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

24 **SECOND CAUSE OF ACTION**

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

26 **(Against All Defendants)**

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

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

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

15 73. Defendants had a consistent policy of not paying Employees wages for all hours
16 worked, including by requiring off the clock work as addressed above, by unlawful deductions, by
17 under-reporting actual hours worked and by requiring Employees to do so as well. Defendants
18 have also failed to include all forms of remuneration in the regular rate of pay used to calculate
19 and pay overtime, and failed to begin paying overtime when it was incurred due to the off the
20 clock work, as detailed above.

21 74. Defendants thus had a consistent policy of not paying Employees wages for all
22 hours worked, including hours at their required regular, overtime, and double-time rates.
23 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted
24 and/or modified certain employees’ hours, including Plaintiff’s, or required Plaintiff and the Class
25 members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and the
26 Class members all earned and owed straight time and overtime wages and other benefits, in
27 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
28 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants

1 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt
2 employees to work through meal periods or remain under Defendants' control when they were
3 required to be clocked out or to otherwise work off the clock to complete their daily job duties and
4 respond to demands from customers and managers.

5 75. As a direct result of Defendants' unlawful wage practices as alleged herein, the
6 Plaintiff and the other members of the Class did not receive the correct wage compensation for
7 their time worked for Defendants. Pursuant to California Labor Code § 1194.2, Plaintiff and class
8 members are entitled to recover liquidated damages in an amount equal to wages unlawfully
9 unpaid and interest thereon.

10 76. During the Class Period, Plaintiff and the other members of the Class were paid
11 less for time worked than they were entitled to, constituting a failure to pay all earned wages. By
12 virtue of Defendants' unlawful failure to accurately pay all earned compensation to Plaintiff and
13 the other members of the Class for the true time they worked, Plaintiff and the other members of
14 the Class have suffered and will continue to suffer an economic injury in amounts which are
15 presently unknown to them and which will be ascertained according to proof at trial.

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

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

1 79. Additionally, Labor Code § 558(a) provides “any employer or other person acting
2 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
3 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
4 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
5 pay period for which the employee was underpaid in addition to an amount sufficient to recover
6 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
7 underpaid employee for each pay period for which the employee was underpaid in addition to an
8 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
9 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in
10 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
11 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
12 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
13 Code § 558.

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

20 81. Employees have been damaged by these violations of California Labor Code §§
21 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
22 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
23 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
24 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
25 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
26 any order or ruling of the commission.”

27 82. Consequently, pursuant to the California Labor Code, including Labor Code §§
28 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including

1 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
2 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
3 their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties
4 against Defendants, and each of them, and any additional sums as provided by the Labor Code
5 and/or other statutes.

6 **THIRD CAUSE OF ACTION**

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

8 **(Against All Defendants)**

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

11 84. Employees regularly worked shifts greater than five (5) hours and in some
12 instances, greater than ten (10) hours. Pursuant to Labor Code § 512, and paragraph 11 of the
13 applicable IWC Wage Order, an employer may not employ someone for a shift of more than five
14 (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or
15 for a shift of more than ten (10) hours without providing him or her with a second meal period of
16 not less than thirty (30) minutes.

17 85. Defendants failed to provide Employees with meal periods as required under the
18 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
19 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
20 provided them after Employees worked beyond the fifth hour of their shifts or Employees
21 otherwise had them shortened and interrupted by work demands and requirements to perform off
22 the clock work and remain under Defendants' control. Furthermore, upon information and belief,
23 on the occasions when Employees worked more than ten hours in a given shift, they did so
24 without receiving a second uninterrupted thirty-minute meal period as required by law.

25 86. Defendants thus failed to provide Plaintiff and the Class members with meal
26 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
27 including by not providing them with the opportunity to take meal breaks, by providing them late
28 or for less than thirty minutes, or by requiring them to perform work during breaks.

1 87. Moreover, Defendants failed to compensate Employees for each meal period not
2 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
3 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
4 employee a meal period in accordance with this section, the employer shall pay the employee one
5 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
6 period is not provided. As detailed above, on the occasions when Defendants did pay any meal
7 period premiums, they upon information and belief underpaid them by miscalculating the regular
8 rate of compensation by not including all forms of remuneration in it. Defendants thus failed to
9 compensate the Employees in the Class for each meal period not provided or inadequately
10 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC
11 Wage Order.

12 88. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
13 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
14 to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or
15 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory
16 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and
17 other statutes and applicable IWC Wage Order paragraphs.

18 **FOURTH CAUSE OF ACTION**

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

20 **(Against All Defendants)**

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

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

26 91. Employees consistently worked consecutive four hour shifts and were generally
27 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
28 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable

1 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
2 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
3 breaks of not less than ten minutes for each consecutive four hour shift. Defendants made no effort
4 to authorize and permit Plaintiff and the Class members to take lawful rest breaks. Employees
5 were often required to work or to otherwise remain under Defendants' control during rest periods,
6 including by responding to work requirements, and had breaks provided untimely as a result of the
7 above described off the clock work.

8 92. Defendants also failed to provide Employees with any recovery or "cooldown"
9 periods to prevent heat illness in violation of Labor Code § 226.7. On information and belief,
10 Defendants failed to maintain reasonable temperatures throughout Defendants' work sites and did
11 not provide Employees with any cooldown periods as a respite from the high temperatures inside
12 the repair shop.

13 93. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage
14 Orders provide that if an employer fails to provide an employee rest period in accordance with this
15 section, the employer shall pay the employee one hour of pay at the employee's regular rate of
16 compensation for each workday that the rest period is not provided. Defendants failed to do so.

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

20 95. Defendants failed to authorize and permit Plaintiff and the Class members to take
21 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
22 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
23 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
24 12 and 20 of the applicable IWC Wage Orders. To the extent Defendants paid any rest break
25 premiums, they upon information and belief, underpaid them by miscalculating the regular rate of
26 compensation by not including all forms of remuneration in it. Defendants thus failed to
27 compensate the Employees in the Class for each rest period not provided or inadequately
28 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC

1 Wage Order.

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

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PAY REPORTING TIME PAY**

9 **UNDER WAGE ORDER 9-2001, 8 CCR § 11090(5)**

10 **(Against All Defendants)**

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

13 98. Wage Order 5-2001 provides that “[e]ach workday an employee is required to report
14 for work and does report, but is not put to work or is furnished less than half said employee's usual
15 or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but
16 in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate
17 of pay, which shall not be less than the minimum wage.” Cal. Code Regs., tit, 8, § 11050(5)(A).

18 99. As set forth herein, Plaintiff and Employees were required to report for work and
19 were sent home before half of their scheduled days’ work. Defendants failed to pay Plaintiff and
20 Employees for half of their scheduled days’ work in violation of the applicable Wage Order.

21 100. As a direct and proximate results of Defendants' actions as set forth herein, Plaintiff
22 and the Class have been damaged in that Plaintiff and the Class have not been paid all required
23 reporting time pay.

24 101. Consequently, pursuant to the California Labor Code, including Labor Code §§
25 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
26 paragraphs 5(A-D), Defendants are liable to Employees for the full amount of all their unpaid
27 wages, including reporting time pay, with interest, plus their reasonable attorneys’ fees and costs,
28 as well as the assessment of any statutory penalties against Defendants, and each of them, and

any additional sums as provided by the Labor Code and/or other statutes.

SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a) and 226.2
(Against All Defendants)

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

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

104. Defendants failed to provide Plaintiff and the similarly situated Employee Class members with accurate itemized wage statements in writing, as required by the Labor Code and paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to Employees by Defendants failed to accurately account for wages, overtime, hours worked, hourly rates, and did not provide pay for deficient meal periods and rest breaks, all of which Defendants knew or reasonably should have known were owed to Employees, as alleged hereinabove. The Wage Statements state a different address than that which is listed by Defendants to the California Secretary of State. Specifically, the Defendants list their address on the California Secretary of State Website as 6333 Telegraph Avenue, Ste. 102, Oakland, California 94609, and earlier as 2354 Powell Street, Ste B, Emeryville, CA 94608. However, the address listed on the Defendants' wage statements is 2354 Powell Street Ste A-1 Emeryville, CA 94608. Moreover, the wage statements Defendants provided to the Employees in the Class failed to list or to accurately list the wage rates or the hours worked during the pay period which led to the calculated pay listed by Defendants without any further detail. Wage statements issued by Defendants to Employees reference "Admin-Clinical 1" which bear no corresponding rate, hours, or formula as to how they

1 were calculated. These sporadic payments appear randomly throughout wage statements issued to
2 Plaintiff during her tenure and made it difficult for her to discern the accuracy of her
3 compensation.

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

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

1 objective standard] would be able to readily ascertain the information without reference to other
2 documents or information.

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

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

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

23 **SEVENTH CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE § 221**

25 **(Against All Defendants)**

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

1 111. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or
2 receive from an employee any part of wages theretofore paid by said employer to said employee.”
3 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
4 public policy, an employer must timely pay its employees for all hours worked. Defendants failed
5 to do so.

6 112. Defendants unlawfully received and/or collected wages from the Employees in the
7 Class by requiring off the clock work, by miscalculating overtime, and by not paying one hour of
8 pay at the regular rate of compensation for every meal and rest period violation endured by
9 Plaintiff and the other Class members, as alleged above. By not compensating Employees for all
10 hours worked and meal and rest period premiums, Defendants unlawfully deducted wages earned
11 in violation of Labor Code § 221.

12 113. As a direct and proximate cause of the unauthorized deductions, Employees have
13 been damaged, in an amount to be determined at trial.

14 **EIGHTH CAUSE OF ACTION**
15 **VIOLATION OF LABOR CODE § 204**
16 **(Against All Defendants)**

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

19 115. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
20 employment are due and payable twice during each calendar month, on days designated in
21 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
22 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
23 during which the labor was performed, and labor performed between the 16th and the last day,
24 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
25 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment
26 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
27 calendar days following the close of the payroll period.” As detailed above, Defendants
28 maintained a consistently applied policy and practice of not paying all wages earned between the

1 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
2 between the 16th and the last day of the month between the 1st and 10th day of the following month.
3 Defendants similarly failed to pay all wages earned by not more than seven calendar days
4 following the close of the payroll period.

5 116. All wages due and owing to Plaintiff and the Class members, including as required
6 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
7 required by Labor Code § 1194 and other sections became due and payable to each employee in
8 each pay period that he or she was not provided with a meal period or rest period or paid straight
9 or overtime wages to which he or she was entitled.

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

19 118. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
20 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
21 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
22 pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
23 applicable IWC Wage Orders.

24 **NINTH CAUSE OF ACTION**
25 **VIOLATION OF LABOR CODE § 203**
26 **(Against All Defendants)**

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

1 120. Plaintiff and numerous Class members are no longer employed by Defendants; they
2 either quit Defendants' employ or were fired therefrom.

3 121. Defendants failed to pay these Employees all wages due and certain at the time of
4 termination or within seventy-two hours of resignation.

5 122. The wages withheld from these Employees by Defendants remained due and owing
6 for more than thirty days from the date of separation from employment.

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

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

26 125. Defendants' failure to pay wages, as alleged, entitles Plaintiff and these former
27 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of
28 the IWC Wage Orders as addressed above, including the requirement that an employee's wages

1 shall continue until paid for up to thirty (30) days from the date they were due.

2 **TENTH CAUSE OF ACTION**

3 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS, LABOR CODE §§ 1174, 1174.5**

4 **(Against All Defendants)**

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

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

11 128. During the course of Plaintiff's and Employees' employment, Defendants
12 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as
13 required by California Labor Code § 1174 by failing to pay them proper wages, overtime, and
14 premium pay as discussed above and failing to document and pay for actual hours worked.

15 129. Defendants are also required by the California Labor Code § 1198 and the
16 applicable Wage Order to maintain a tracking system that accurately records the times during
17 which Employees work.

18 130. Defendants have maintained a common unlawful policy and practice of failing to
19 accurately record all hours worked and all meal period start and end times.

20 131. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
21 knew wages to be due but failed to pay them.

22 132. Accordingly, Defendants are liable for civil penalties pursuant to the California
23 Labor Code including § 1174.5, for the three years prior to the filing of this Complaint.

24 **ELEVENTH CAUSE OF ACTION**

25 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES LABOR CODE § 2802**

26 **(Against All Defendants)**

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

1 134. Plaintiff is informed and believes and based thereon alleges that throughout the
2 period applicable, Defendants required Plaintiff and the Class members to pay for necessary work
3 related expenses they incurred. These included the cell phone-related expenses Plaintiff incurred
4 in responding to calls from management. Plaintiff and Class employees were required to
5 download the GroupMeet App to receive and respond to messages from management and other
6 employees. Furthermore, Defendants required that Employees access a website on their personal
7 cell phones, a timekeeping/patient billing application known as "Central Reach." Plaintiff and the
8 Class members must be reimbursed for these necessary business expenses under Labor Code §
9 2802 and Defendants systematically failed to do so.

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

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

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

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28 ///

1 **TWELFTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

4 138. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
5 in full herein. Plaintiff, on behalf of herself, the Employees in the Class, and the general public,
6 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
7 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
8 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
9 the public interest within the meaning of Code of Civil Procedure § 1021.5.

10 139. Plaintiff is a “person” within the meaning of Business & Professions Code
11 § 17204, has suffered injury, and therefore has standing to bring this cause of action for
12 injunctive relief, restitution, and other appropriate equitable relief.

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

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

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

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

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

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

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

22 147. Unless restrained by this Court Defendants will continue to engage in such
23 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
24 should make such orders or judgments, including the appointment of a receiver, as may be
25 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
26 deceptive practice prohibited by the Business & Professions Code, including but not limited to
27 the disgorgement of such profits as may be necessary to restore Employees to the money
28 Defendants have unlawfully failed to pay.

1 **THIRTEENTH CAUSE OF ACTION**

2 **PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.***

3 **(Against All Defendants)**

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

6 149. Plaintiff and the Employees in the Class are also aggrieved employees as defined
7 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and
8 either were or are employed by Defendants (“Aggrieved Employees”) during the relevant period.

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

16 151. As such, Employees seek wages and penalties under Labor Code §§ 2698 and
17 2699 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5,
18 including the penalty provisions, without limitation, based, inter alia, on the following California
19 Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512, 558, 1174,
20 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 et seq.

21 152. More specifically, after complying with the notice procedures of Labor Code §
22 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
23 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above-
24 addressed underlying claims and seeking penalties as specified by the applicable corresponding
25 provisions, including as follows:

26 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
27 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
28 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and

1 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
2 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
3 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
4 to Labor Code § 2699(g)(1);

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

13 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
14 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
15 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
16 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
17 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
18 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
19 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
20 providing inaccurate wage statements and failing to maintain records as required under Labor
21 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
22 Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a
23 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
24 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent...";

25 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
26 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
27 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
28 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20

1 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
2 § 2699(g)(1);

3 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
4 Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the
5 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
6 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
7 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
8 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs
9 pursuant to Labor Code § 2699(g)(1);

10 (f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For
11 Defendants' failure to provide Employees with all their required and earned sick days and all their
12 COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil
13 and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5,
14 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to
15 Labor Code § 2699(g)(1); and

16 (g) All Alleged Violations of the IWC Wage Orders and Other Labor Code
17 Sections: For any above addressed violation of the applicable provisions of the IWC Wage
18 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §
19 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and
20 paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to
21 Labor Code § 2699(g)(1).

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

24 (a) Any employer or other person acting on behalf of an employer who violates, or
25 causes to be violated, a section of this chapter or any provision regulating hours and days of work
26 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1)
27 For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
28 which the employee was underpaid in 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...

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

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

7 154. Plaintiff has exhausted her administrative remedies by submitting a certified letter
8 to the LWDA and Defendants on May 3, 2024 (LWDA-CM-1026106-24) addressing in detail the
9 specific provisions of the Labor Code Defendants have violated and addressing the facts and legal
10 theories to support the alleged violations and requested penalties. The LWDA has not provided
11 notice of its intent to investigate the alleged violations within 65 calendar days of the postmark
12 date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations
addressed herein and in the PAGA Notice letter and the original Complaint.

13 **RELIEF REQUESTED**

14 WHEREFORE, Plaintiff prays for the following relief:

- 15 1. For an order certifying this action as a class action;
- 16 2. For compensatory damages in the amount of the unpaid minimum wages for work
17 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
18 the filing of this action, as may be proven;
- 19 3. For liquidated damages in the amount equal to the unpaid minimum wage and
20 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 21 4. For compensatory damages in the amount of all unpaid wages, including overtime
22 and double-time pay, as may be proven;
- 23 5. For compensatory damages in the amount of the hourly wage made by Employees
24 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
25 years prior to the filing of this action, as may be proven;
- 26 6. For compensatory damages in the amount of the hourly wage made by Employees
27 for each day requisite rest breaks were not provided or were deficiently provided where no
28 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may

1 be proven;

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

3 8. For restitution and/or damages and penalties for Defendants' failure to pay all
4 wages due twice monthly under Labor Code § 204, as may be proven;

5 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
6 for all class members in violation of Labor Code § 221, as may be proven;

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

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

10 12. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;

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

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

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

16 16. For penalties under Labor Code § 558, as may be proven;

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

20 18. For other wages and penalties under the Labor Code as may be proven;

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

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

23 21. For an award providing for the payment of the costs of this suit;

24 22. For an award of attorneys' fees; and

25 23. For such other and further relief as this Court may deem proper and just.

26 DATED: July 9, 2024

D.LAW, INC.

27 By: 

28 Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Plaintiff
Daisy Ramirez and the putative class

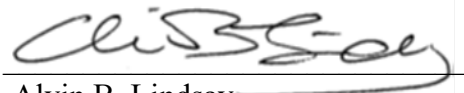
DEMAND FOR JURY TRIAL

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

DATED: July 9, 2024

D.LAW, INC.

By



Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Plaintiff
Daisy Ramirez and the putative class

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

Kere K. Tickner
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[X] (COURTESY COPY BY ELECTRONIC SERVICE) I caused the document(s) described herein to be served on the person(s) noted above by electronic mail to their E-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. [Pursuant to Civil Code Procedure 1010.6]

Executed on July 9, 2024, at Glendale, California.

Sasha Zambrano