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on behalf of herself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

NOEL NICOLE LE VAR, an individual, on
behalf of herself and others similarly situated,

Plaintiff,

vs.

BANNING SNF HEALTHCARE, LLC, a
California Limited Liability Company;
MOUNT MEGIDDO, LLC, a California
Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Case No.: ~~CVR12402899~~ CVRI2402899

CLASS ACTION

Assigned for All Purposes To:

Hon. Harold Hopp

Dept.: 1

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a)
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Pay Vacation Wages (§ 227.3);
10. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
11. Failure to Provide Suitable Seating;
12. Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802;
13. Violation of Business & Professions Code § 17200 *et seq.*; and
14. Penalties under PAGA Labor Code § 2698.

DEMAND FOR JURY TRIAL

Original Complaint Filed: May 23, 2024

Trial Date: None Set

1 Plaintiff NOEL NICOLE LE VAR (hereinafter “Plaintiff”), on behalf of herself and all
2 other similarly situated non-exempt, hourly workers employed by Defendants in California
3 (collectively, “Employees”; individually, “Employee”) complains of Defendants, and each of
4 them, as follows:

5 INTRODUCTION

6 1. Plaintiff brings this action on behalf of herself and all other similarly situated
7 current and former Employees within the State of California who, at any time from four years
8 prior to the filing of this lawsuit, are or were employed at locations in California by Defendants
9 BANNING SNF HEALTHCARE, LLC, a California Limited Liability Company; MOUNT
10 MEGIDDO, LLC, a California Limited Liability Company; and DOES 1 through 50, inclusive
11 (all defendants being collectively referred to as “Defendants”). Plaintiff alleges that Defendants,
12 and each of them, violated various provisions of the California Labor Code, relevant orders of the
13 Industrial Welfare Commission (“IWC”), and the California Business & Professions Code, and
14 seeks redress for these violations.

15 2. Plaintiff is a resident of California and Riverside County, and during the time
16 period relevant to this Complaint was employed by Defendants as a non-exempt hourly Employee
17 within the State of California and placed at Defendant BANNING SNF HEALTHCARE, LLC’s
18 office and facility named Sunrise Post Acute in Banning, California and within the County of
19 Riverside. Defendant BANNING SNF HEALTHCARE, LLC (“BANNING”) operates out of
20 several facilities and offices in California. Defendant MOUNT MEGIDDO LLC (“MEGIDDO”)
21 is a related entity to BANNING and operates out of several facilities and offices in California, and
22 lists its corporate address and California offices in Torrance, California. Plaintiff and the other
23 similarly situated Employees of Defendants worked in Defendants’ facilities at Defendants’ behest
24 and without being paid all wages due and without being provided all their required meal periods
25 and rest breaks. Upon information and belief, Plaintiff was employed by Defendants and shared
26 similar job duties and responsibilities, were subjected to the same policies and practices, and
27 endured similar violations at the hands of Defendants as the other Employee Class members who
28 served in similar and related positions at the BANNING and MEGIDDO facilities in California.

1 3. Defendants failed to pay Plaintiff and the Employees in the Class for all their hours
2 worked and failed to record accurate times worked by these Employees, including by requiring off
3 the clock work and unlawful time shaving and rounding, failed to pay them at the appropriate rates
4 for all hours worked, failed to pay all wages due and owing at termination or resignation, and
5 provided Plaintiff and the Class members with inaccurate wage statements that prevented them
6 from learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the
7 Class with lawful meal and rest periods, as Employees were required to remain under Defendants'
8 control and take shortened or late or interrupted meal periods and were not provided with the
9 opportunity to take full uninterrupted and duty-free rest periods and meal breaks, as required by
10 the Labor Code and the applicable paragraphs of the IWC Wage Orders.

11 4. Defendant BANNING is a California Limited Liability Company which lists with
12 the California Secretary of State its principal executive offices and California offices in Banning,
13 California and Riverside County. Upon information and belief, BANNING is a skilled nursing
14 facility that provides long term care to its patients. BANNING is listed as the employer on
15 Plaintiff's and Class Members' wage statements, with the same Banning, California address.
16 BANNING lists its type of business as "Skilled Nursing Facility" with the California Secretary of
17 State and, upon information and belief, BANNING also does business as "Banning Healthcare"
18 and "Sunrise Post Acute," where Plaintiff worked.

19 5. Defendant MEGIDDO is a California Limited Liability Company which lists with
20 the California Secretary of State its principal executive offices in Torrance, Los Angeles County,
21 California. MEGIDDO is listed as Plaintiff's employer on her W-2 form, and also lists its type of
22 business as "Skilled Nursing Facility" with the California Secretary of State. Upon information
23 and belief, MEGIDDO is a parent company or is an otherwise related entity to BANNING and
24 operates health care facilities in California and provides skilled nursing services and long-term
25 care to patients. Upon information and belief Defendants issued similar W-2 forms to other
26 similarly situated non-exempt employee Class members.

27 6. This Court has jurisdiction over this Action pursuant to California Code of Civil
28 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought

1 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
2 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
3 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
4 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Riverside County,
5 and Defendants conduct business in Riverside County and are headquartered and employ Plaintiff
6 and other Class Members there.

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

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

26 **FACTUAL BACKGROUND**

27 9. The Employees who comprise the Class, including Plaintiff, are non-exempt
28 employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare

Commission (“IWC”). During the period of four years prior to the filing of this action through its resolution, Plaintiff and the Class members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class members all wages due and owing, including by unlawfully miscalculating overtime rates or under-recording of hours worked and by otherwise requiring off the clock work, failed to provide meal and rest breaks, and failed to furnish accurate wage statements and timely pay all wages owed, all in violation of various provisions of the California Labor Code and applicable paragraphs of the IWC Wage Orders.

10. During the course of Plaintiff’s and the Class members’ employment with Defendants, they were not paid all wages they were owed, including for all work performed (resulting in “off the clock” work) and for all their overtime hours worked. This has resulted in systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-exempt, hourly Employees at their facilities in California. Upon information and belief, Defendants’ employment of Plaintiff and the Class members is not governed under a collective bargaining agreement.

11. Plaintiff was employed as Certified Nursing Assistant, with job duties that included providing patient care and assistance with daily living activities at Defendants’ facility in Banning, California. Plaintiff was generally scheduled to work forty or more hours per week, five or six days per week, which included shifts of anywhere from eight to sixteen hours in duration. Plaintiff’s shifts were generally scheduled from 6:30 a.m. to 2:30 p.m., including an unpaid thirty-minute meal period Defendants presumed they provided. Plaintiff and Class Members were required to utilize Defendants’ time keeping program through a finger print scanning device mounted on the wall at the nurse’s station. Most of the time, the timekeeping device did not work. When this occurred, Plaintiff and the other Class members were required to write down their clock in time on a “Time Adjustment Sheet” that had to be approved by a charge nurse.

12. Plaintiff and Class member were required by the Defendants to round their time on these handwritten documents to their scheduled hours which always resulted in recording fewer hours worked than they actually worked and should have been paid by Defendants. Upon

1 information and belief, Plaintiff and the other Class members were generally required to begin
2 working or otherwise be under Defendants' control at least ten minutes before any scheduled shift
3 start time to undergo COVID scanning or care for patients, in addition to the time clock
4 operational issues addressed above.

5 13. Moreover, at least once per week, Defendants required Plaintiff and Class
6 Members to help patients or coworkers after clocking out for their work shifts for about ten
7 minutes. In such instances, Defendants failed to compensate Plaintiff and the Class members for
8 the time they were working performing job duties or otherwise under Defendants' control before
9 their scheduled shift start time. At the end of the work shift, Plaintiff would typically remain past
10 the end of her scheduled shift time to complete her required daily job tasks and duties. Further,
11 Plaintiff and Class Members received calls and text messages on her personal cell phone from
12 Defendants' regarding work related matters and scheduling while she was off duty. Plaintiff was
13 compelled to respond to manager and customer communications at least 4-5 times per week for
14 5 minutes each time during her off duty and off the clock hours.

15 14. Defendants systematically followed these unlawful policies and practices, upon
16 information and belief, in connection with other Employees in a concerted effort to limit and
17 restrict overtime incurred by Plaintiff and the other Class members. However, given the off the
18 clock work and issues with meal periods and their timing, Plaintiff most often worked well beyond
19 eight hours in a work shift. As a result of the above-described rounding and other off the clock
20 work, Defendants failed to pay Plaintiff and Class members overtime for several minutes at the
21 end of work shifts, which Defendants did not record in any timekeeping records.

22 15. Plaintiff was therefore not paid for all her hours worked at the required minimum,
23 overtime and double time wage rates due to Defendants' policy and practice of requiring her to
24 work off the clock and without pay. With work shifts generally scheduled for eight hours or more,
25 this unpaid off the clock work resulted in Plaintiff and the Class members working past eight
26 hours on a shift, which required that they be paid at the correct overtime rate of 1.5 times their
27 regular rate. Defendants thus systematically underpaid Plaintiff and the Class members by failing
28 to pay them at the required overtime rates for all hours over eight in a work shift or over forty in a

1 work week, and all hours over twelve in a day at the required double time rate. Upon information
2 and belief, the Class members were bound by similar scheduling and work policies which
3 Defendants required them to follow and endured similar violations at Defendants' hands as
4 Plaintiff.

5 16. Defendants have either failed to maintain timekeeping records for Plaintiff that
6 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants'
7 required and the actual hours Plaintiff worked, or have otherwise declined to produce them to
8 Plaintiff in response to a timely and lawful request. By editing time records, or requiring Plaintiff
9 and the Class member to clock in and out for time periods showing less hours than were actually
10 worked or reflecting compliant meal periods that were not provided, and by failing to pay for all
11 hours worked, including at the correct rates of pay, Defendants have committed knowing and
12 intentional ongoing violations of the record keeping requirements under the Labor Code §§ 226
13 and 1174.

14 17. As a result of the above-described unlawful requirements to work off the clock,
15 the failure to accurately record all hours worked and unlawful rounding, and the other wage
16 violations they endured at Defendants' hands, Plaintiff and the Class members were not properly
17 paid all wages earned and all wages owed to them by Defendants, including when working more
18 than eight hours in any given day and/or more than forty hours in any given week. As a result of
19 Defendants' unlawful policies and practices, Plaintiff and Class members incurred overtime hours
20 worked for which they were not adequately and completely compensated, in addition to the hours
21 they were required to work off the clock at their regular rates.

22 18. Therefore, from at least four years prior to the filing of this lawsuit and
23 continuing to the present, Defendants had a consistent policy or practice of failing to pay
24 Employees for all hours worked and failing to pay minimum wages for all time worked, as
25 required by California law. Also, from at least four years prior to the filing of this lawsuit and
26 continuing to the present, Defendants had a consistent policy or practice of failing to pay
27 Employees overtime compensation at premium overtime rates for all hours worked in excess of
28 eight hours a day and/or forty hours a week, and double-time rates for all hours worked in excess

1 of twelve hours a day, in violation of Labor Code § 510 and the corresponding sections of IWC
2 Wage Orders. To the extent Defendants paid Plaintiff and the Class members bonuses and shift
3 differentials and other forms of remuneration above and beyond their hourly pay, upon
4 information and belief Defendants miscalculated and therefore underpaid any overtime they paid
5 during these pay periods by failing to include all forms of remuneration in the regular rate used to
6 calculate and pay overtime.

7 19. Defendants also failed to provide Plaintiff and the Class members with their
8 required first and second meal periods, and their first, second, and third required rest breaks. The
9 many and different work demands from managers did not permit those working to take their
10 required breaks or complete all required work within the scheduled times. Defendants prohibited
11 Plaintiff and Class Member from leaving the work premises during their meal periods. The above
12 described off the clock work and failure to pay for all hours worked also contributed to
13 Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Class
14 members, as required under the Labor Code and Paragraph 11 of the applicable IWC Wage
15 Order(s). Defendants similarly systematically failed to authorize and permit Plaintiff and the
16 employee Class Members to take all required 10-minute rest breaks, as required under the Labor
17 Code and Paragraph 12 of the IWC Wage Order(s).

18 20. Defendants systematically and unlawfully failed to schedule rest breaks and meal
19 periods and failed to ensure there was adequate staffing so that Employees could take lawful meal
20 periods and rest breaks. Due to the volume of work and demands from managers, Plaintiff and
21 Class members were often unable to take a timely meal period before the start of the fifth hour of
22 work. Moreover, on days when Employees worked beyond ten hours, Defendants failed to provide
23 them with an opportunity to take a second meal period or a third rest break. Plaintiff and Class
24 Members were also required by the Defendants to remain at the work facility during rest breaks
25 and was similarly discouraged on meal breaks. Even when Plaintiff was able to receive a timely
26 first meal period or able to take both rest breaks, these would often be interrupted by phone calls,
27 texts, emails, and group chat messages she received on her personal mobile phone from managers
28 and work personnel regarding scheduling and other work-related items requiring attention.

1 Defendants' unlawful communications also often compelled Plaintiff and Class members to cut
2 their meal periods and rest breaks short to complete urgent work tasks at the expense of their
3 breaks. Upon information and belief, Defendants failed to compensate Plaintiff and the Class
4 members for the time they were under control of Defendants during their meal periods and rest
5 breaks.

6 21. The volume of work was so heavy was that it would have been impossible for
7 Plaintiff to finish her tasks on time if she took all her required rest breaks. Likewise, due to the
8 time sensitive care giving nature of her work, Plaintiff was on many occasions unable to take a
9 meal period until after her fifth hour of work. On work shifts when Plaintiff typically worked more
10 than ten (10) hours, she was generally not provided a second meal period or third rest break. Even
11 when Plaintiff was able to take rest breaks or was able to take a timely meal period, her meal
12 periods and rest breaks would be interrupted by calls, texts, emails and messages as addressed
13 above. These communications routinely required that Plaintiff cut her meal periods and rest breaks
14 short to respond to them. Therefore, even when Plaintiff and Class members were provided with
15 timely meal periods and rest breaks, these would frequently be interrupted by work-related calls,
16 texts, emails or messages which they had to respond to. Defendants' practices and policies thus
17 often resulted in late and/or interrupted meal periods and missed and/or interrupted rest breaks.

18 22. Defendants have manifestly failed to provide all the legally required unpaid, off-
19 duty meal periods and all the legally required paid, off-duty rest periods to Plaintiff and the other
20 Class members, as required by the applicable Wage Orders and Labor Code. Defendants did not
21 have a policy or practice which provided or recorded all the legally required unpaid, off-duty meal
22 periods and all the legally required paid, off-duty rest periods to the Plaintiff and the other Class
23 members. Plaintiff and other Class members were required to perform work as ordered by
24 Defendants or otherwise remain under Defendants' control for more than five hours during a shift,
25 or ten hours in a shift, but were often required to do so without receiving a lawful, timely, and
26 duty-free 30-minute meal break. Additionally, as addressed above, Defendants followed a practice
27 of requiring off the clock work and unlawful rounding in a manner that would impact when
28 Employees were to receive meal periods and rest breaks, thus leading to further violations.

1 23. As a result, Defendants' failure to provide Plaintiff and the Class members with
2 all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
3 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants have
4 either failed to maintain required records of when meal periods were actually provided or failed to
5 produce them in response to Plaintiff's timely and lawful requests, or else maintained inaccurate
6 and incomplete records. Defendants also failed to pay Employees "premium pay," i.e. one hour of
7 wages at each Employee's effective hourly rate of pay, for each meal period or rest break that
8 Defendants failed to provide or deficiently provided. Upon information and belief, if and when
9 Defendants did pay any meal period premiums, they failed to include all forms of remuneration
10 such as bonuses and shift differentials in the regular rate used to calculate and pay it. To the extent
11 Plaintiff and the Class members worked shifts of over ten hours, upon information and belief
12 Defendants failed to provide them with a second required meal period.

13 24. Therefore, for at least four years prior to the filing of this action and through to
14 the present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise
15 not provided with the opportunity to take required meal breaks due to Defendants' policies and
16 practices. On the occasions when Plaintiff and the Class members were provided with a meal
17 period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were
18 not provided with one hour's wages in lieu thereof. Meal period violations thus occurred in one or
19 more of the following manners:

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

- 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.

5 25. Defendants also failed to authorize and permit Plaintiff and the Class members to
6 take duty-free, net ten minute rest breaks for ever four hours of shift work, or major fraction
7 thereof. There were similar issues with the required net ten-minute rest breaks Plaintiff and the
8 Class members were not authorized and permitted to take as with meal periods. The work
9 demands placed upon Plaintiff, and the unlawful rounding of their hours worked, also manifested
10 in Defendants' failure to authorize and permit duty-free, net ten-minute rest periods.

11 26. Given the constant and ongoing demands she faced and Defendants' failure to
12 adequately staff its facilities to permit employees to take breaks, Plaintiff was compelled to remain
13 on the premises performing job-related duties while also remaining under Defendants' control
14 during times when she was supposed to be enjoying a duty-free rest break. By uniformly requiring
15 Plaintiff and the other similarly situated co-workers to remain under Defendants' control and on
16 premises during rest breaks, Defendants committed systematic and ongoing rest break violations.
17 To the extent Defendants paid any rest break premium payments under Labor Code § 226.7 to
18 Plaintiff or Class members, these payments failed to include all forms of remuneration in the
19 hourly rate at which they were paid.

20 27. Defendants' management did not emphasize the requirement to provide at least
21 one ten-minute duty-free rest period for each four-hour duty period, or major fraction thereof. If
22 and when Plaintiff was permitted to take a ten-minute rest break on a shift, he was not permitted to
23 take a second one or a third one or any breaks were untimely or impermissibly shortened. Further
24 violations occurred as Plaintiff and the Class members were required to remain under Defendants'
25 control by not being able to leave the premises and by Defendants' requirement that they remain
26 ready to respond to work requirements and job demands, thus requiring Employees to unlawfully
27 remain under Defendants' control during rest breaks.

1 28. Defendants thus failed to authorize and permit Class members to take all their
2 required rest breaks. Plaintiff and the other similarly situated Class members were either not
3 authorized permitted the opportunity to take a rest break, or were required to remain under
4 Defendants' control and respond to instructions and job demands. Defendants also failed to
5 authorize and permit Employees to leave the property premises during rest breaks, or else
6 prevented them from doing so, thus further evidencing Defendants' policy and practice of
7 requiring Plaintiff and the Class members to remain under their control during required off-duty
8 rest breaks.

9 29. Defendants' policies and practices therefore systematically deny and denied
10 Plaintiff and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free
11 meal periods. Employers must permit and authorizes employees to take off-duty rest periods. That
12 is, during rest periods employers must relieve employees of all duties and relinquish control over
13 how employees spend their time. Plaintiff and the Class members were and are under Defendants'
14 control when they are working through rest breaks or receiving them late or shortened.

15 30. Plaintiff and the Defendants' Employees in the Class were therefore not
16 authorized and permitted to take lawful rest periods, were systematically required by Defendants
17 to work through or during breaks, and were not provided with one hour's wages in lieu thereof.
18 They were required to remain on-duty during breaks or portions of their breaks, thus making them
19 either untimely or shortened and on-duty, and they were also effectively prevented from leaving
20 the premises during rest breaks under Defendants' policies and practices. Rest period violations
21 therefore arose in one or more of the following manners:

- 22 (a) Class members were required to work without being provided a minimum
23 ten minute rest period for every four hours or major fraction thereof worked
24 and were not compensated one hour of pay at their regular rate of
25 compensation for each workday that a rest period was not provided;
- 26 (b) Class members were not authorized and permitted to take timely rest periods
27 for every four hours worked, or major fraction thereof; and
- 28 (c) Class members were required to remain on-duty or under Defendant's

1 control during rest periods or otherwise had their rest periods interrupted by
2 work demands.

3 31. From at least four years prior to the filing of this lawsuit and continuing to the
4 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
5 deducting the Employees' earned wages, including by the above described off the clock work and
6 on-duty work while on unpaid meal breaks and by Defendants' policy and practice of requiring
7 Plaintiff and the Class members to create time punch records that did not reflect their actual hours
8 worked. By not compensating Employees for all hours worked, Defendants unlawfully deducted
9 wages earned by and owed to Plaintiff and the Class members, in violation of Labor Code § 221.

10 32. Defendants also maintained policies that provide for the unlawful forfeiture of
11 vested vacation pay in violation of Labor Code § 227.3. Under California law, vacation wages are
12 considered a form of wages. Vested vacation pay and other similar forms of paid time off earned
13 based on labor performed are considered wages that cannot be subject to forfeiture without
14 compensation for forfeited days at the applicable rates required by law. Plaintiff and the Class
15 members are entitled to vacation accrued during their employment with Defendants, and upon
16 information and belief, upon termination, Plaintiffs and the Class members were not paid out all
17 accrued vacation pay.

18 33. As a result of the above described illegal policies and practices, Defendants
19 engaged in and enforced the following additional unlawful practices and policies against Plaintiff
20 and the Class members he seeks to represent:

- 21 (a) failing to pay all wages owed to Class members who either were discharged,
22 laid off, or resigned in accordance with the requirements of Labor Code §§
23 201, 202, 203;
- 24 (b) failing to pay all wages owed to the Class members twice monthly in
25 California Specialty accordance with the requirements of Labor Code § 204;
- 26 (c) failing to pay Class members all wages owed, including all meal and rest
27 period premium wages;
- 28

1 (d) failing to maintain accurate records of Class members' earned wages and
2 meal periods in violation of Labor Code §§ 226 and 1174(d) and section 7
3 of the applicable IWC Wage Orders; and

4 (e) failing to produce timekeeping records in response to Plaintiff's timely and
5 lawful request to receive them under these authorities.

6 34. As a matter of policy at all California locations, and upon information and belief,
7 Defendant failed to provide suitable seating to California Employees. Instead, Defendant
8 prohibited Class Members from utilizing seating to perform their work duties in various
9 departments where they could have performed their work duties while seated. Seating was initially
10 provided for Plaintiff and Class members. However, when a new manager was hired, her first
11 order of business was to remove all chairs in the hallways and she raised all computers and tablets
12 to walls or "standing only" stations to prevent the Plaintiff and Class members from being seated
13 to conduct charting and note taking. For most Class members, their job duties could be performed
14 while seated. Plaintiff and Class Member performed job duties that uniformly permitted them to
15 sit down, and a seat would not have interfered with their job performance.

16 35. From at least four years prior to the filing of this lawsuit, and continuing to the
17 present, Defendants have also consistently failed to provide Employees with timely, accurate, and
18 itemized wage statements, in writing, as required by California wage-and-hour laws, including by
19 the above-described requirement of off the clock work, unlawful rounding, failure to pay all
20 overtime or pay it at the correct rate, and failure to pay premium wages for unprovided or
21 otherwise unlawful meal and rest breaks. Defendants have also made it difficult to record with
22 precision for the unlawfully withheld wages and meal and rest period compensation owed to
23 Plaintiff and the Class, during the liability period, because they did not implement and preserve a
24 record-keeping method as required for non-exempt employees by California Labor Code §§ 226,
25 1174(d), and paragraph 7 of the applicable California Wage Orders. Upon information and belief,
26 time clock punches were not maintained or were not accurately maintained for work shifts and
27 meal periods, which were automatically presumed by Defendants to have been lawfully provided
28 when they were not. Defendants also failed to accurately record and pay for all regular and

1 overtime hours worked by Plaintiff and the Class members. Plaintiff was not provided with the
2 opportunity to review her timekeeping records for accuracy and to ensure that he was being paid
3 correctly. Upon information and belief, the other similarly situated Class members endured similar
4 violations at Defendants' hands.

5 36. Defendants have thus also failed to comply with Labor Code § 226(a) by failing
6 to issue any wage statements and by issuing wage statements that inaccurately reported total hours
7 worked and total wages earned by Plaintiff and the Class members, along with the appropriate
8 applicable rates, among other requirements. Plaintiff and Class members are therefore entitled to
9 penalties not to exceed \$4,000.00 for each employee pursuant to Labor Code § 226(b). Defendants
10 have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by
11 failing to maintain time records showing when the employee begins and ends each work period,
12 meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by
13 itemizing in wage statements all deductions from payment of wages and accurately reporting total
14 hours worked by the Class members. Upon information and belief, Defendants also failed to
15 provide Employees such as Plaintiff with written notice complying with all the requirements of
16 Labor Code § 2810.5.

17 37. Defendants also required Plaintiff and the Class members to work hours off the
18 clock for which they were not compensated, including unlawfully rounded time and during
19 interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime
20 premium wages owed for work conducted on a work shift and a workday, as addressed above.
21 Therefore, from at least four years prior to filing this lawsuit and continuing to the present,
22 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to
23 Plaintiff and other similarly situated Employees at the time of their termination or within seventy-
24 two hours of their resignation, as required by California wage-and-hour laws, including Labor
25 Code § 203. In view of the above addressed violations, Defendants have also failed to pay all
26 wages owed to Plaintiff and the Class members twice monthly in accordance with the
27 requirements of Labor Code § 204.

28

38. Additionally, from at least four years prior to the filing of this lawsuit and continuing to the present, Defendants have regularly required Plaintiff and the Class members to incur necessary business expenses in the course of performing their required job duties without reimbursement. These included the use of Plaintiff's personal mobile telephones to respond to customers and supervisors in the service of performing her job duties. Additionally, Plaintiff was required by the Defendants to provide her own vitals equipment such as blood pressure cuffs, thermometers, and pull on socks to perform her job. Upon information and belief, Defendants also failed to pay for the same business expenses incurred by Class members. Plaintiff and the Class members must be reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do so.

39. In light of the foregoing, Plaintiff and the Employees in the Class bring this action pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.7, 510, 511, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698 *et. seq.*, and California Code of Regulations, Title 8, section 11000 *et seq.* and applicable provisions of the IWC Wage Orders.

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

CLASS ALLEGATIONS

41. 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 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 in connection with Defendants’ facilities and offices within the State of California.” This includes all non-exempt, hourly Employees providing healthcare and related services at Defendants’ nursing facilities to Defendants’ California customers and patients and

1 those in similar and related positions. Further, Plaintiff seeks to represent Subclasses composed of
2 and defined as follows:

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

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

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

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

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

17 f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members
18 who were subject to Defendants' policy and/or practice of deducting wages earned from their pay,
19 including by requiring off the clock work.

20 g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class
21 members who were subject to Defendants' policy and practice of not timely paying all wages
22 earned when they were due and payable at least twice monthly.

23 h. Subclass 8. Termination Pay Subclass. All Class members who, within the
24 applicable limitations period, either voluntarily or involuntarily separated from their employment
25 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
26 termination.

27 i. Subclass 9. Vacation Forfeiture Subclass. All Class members who, within the
28 applicable limitations period, were subjected by Defendants to an unlawful forfeiture of vested

1 vacation pay.

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

5 k. Subclass 11. Expense Reimbursement Subclass. All Class Members who incurred
6 necessary and reasonable expenses in connection with performing their job duties for Defendants
7 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

8 l. Subclass 12. Suitable Seating Class. All Class members who were subject to
9 Defendants' policy and/or practice of failing to provide suitable and adequate seating as provided
10 by California law.

11 m. Subclass 13. UCL Subclass. All Class members who are owed restitution as a
12 result of Defendants' business acts and practices, to the extent such acts and practices are found to
13 be unlawful, deceptive, and/or unfair.

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

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

27 44. This action has been brought and may properly be maintained as a class action
28 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community

1 of interest in this litigation and the proposed Class is easily ascertainable from the employment
2 records for Plaintiff and the Class members that Defendants are required to maintain under
3 California law.

4 **A. Numerosity**

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

11 **B. Commonality**

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

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

inaccurate wage statements;

g. Whether Defendants violated Labor Code § 221;

h. 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;

i. Whether Defendants' conduct was willful;

j. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of Class members' earned wages and work periods;

k. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;

l. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;

m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;

n. Whether the nature of Plaintiffs' and Class Members' job duties reasonably permit the use of seating;

o. Whether Defendant unlawfully and/or willfully deprived Plaintiffs and Class Members of suitable seating when the nature of their job duties reasonably permitted it;

p. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*; and

q. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business expenses incurred by Employees.

C. Typicality

47. The claims of the named plaintiff are typical of those of the other Employees. The Employee Class members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct and uniformly applied policies in violation of statutes as alleged herein. Plaintiff's claims for the off the clock work and meal and rest violations he was

required to endure are typical of those of the other Class members.

D. Adequacy of Representation

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

E. Superiority of Class Action

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

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

51. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment. Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would set forth the subject and nature of the instant action. The Defendants' own business records can be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent

1 that any further notice is required additional media and/or mailings can be used.

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

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

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY MINIMUM WAGES**

18 **(Against All Defendants)**

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

21 55. Defendants failed to pay Employees minimum wages they were owed, including by
22 their consistent policy of failing to pay Employees for all hours worked. Employees would work
23 hours and not receive wages, including as alleged above in connection with off the clock work,
24 including all the time required to remain on duty and under Defendants' control and during breaks
25 and due to the work demands placed upon them by Defendants' management, and due to the
26 unlawful rounding, all addressed in detail above. Defendants, and each of them, have also
27 intentionally and improperly rounded, changed, adjusted and/or modified Employee hours, or
28 required Employees to do so, and imposed difficult to attain job and shift scheduling requirements

1 on Plaintiff and the Class members, which resulted in off the clock work and underpayment of all
2 wages owed to Employees over a period of time, while benefiting Defendants. Defendants'
3 uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to
4 the Class as a whole, as a result of implementing a uniform policy and practice that denied
5 accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

6 56. In California, employees must be paid at least the then applicable state minimum
7 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and
8 paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the
9 applicable IWC Wage Orders defines "Hours Worked" as "the time during which an employee is
10 subject to the control of an employer, and includes all the time the employee is suffered or
11 permitted to work, whether or not required to do so." Additionally, pursuant to California Labor
12 Code § 204, other applicable laws and regulations, and public policy, an employer must timely
13 pay its employees for all hours worked. Defendants failed to do so.

14 57. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:
15 "The minimum wage for employees fixed by the commission is the minimum wage to be paid to
16 employees, and the payment of a less wage than the minimum so fixed is unlawful."

17 58. The applicable minimum wage rate fixed by the commission for work during the
18 relevant period is found in the Wage Orders.

19 59. The minimum wage provisions of California Labor Code are enforceable by private
20 civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to
21 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
22 overtime compensation applicable to the employee is entitled to recover in a civil action the
23 unpaid balance of the full amount of this minimum wage or overtime compensation, including
24 interest thereon, reasonable attorney's fees and costs of suit."

25 60. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
26 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
27 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
28 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for

1 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
2 the absence of a contractually agreed upon one.

3 61. In committing these violations of the California Labor Code, Defendants
4 inaccurately recorded, or required Plaintiff and the Class members to input times that did not
5 reflect their actual hours worked, or calculated the correct time worked and consequently
6 underpaid the actual time worked by Plaintiff and other members of the Class, including by
7 requiring off the clock work, as addressed in detail above. Defendants acted in an illegal attempt to
8 avoid the payment of all earned wages, and other benefits in violation of the California Labor
9 Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.
10 As a result of these violations, Defendants also failed to timely pay all wages earned in California
11 Specialty accordance with California Labor Code § 1194.

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

16 63. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
17 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
18 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
19 pay each employee minimum wages.

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

22 65. Also, California Labor Code §1198 instructs that: states, “the maximum hours of
23 work and the standard conditions of labor fixed by the commission shall be the maximum hours of
24 work and the standard conditions of labor for employees. The employment of any employee for
25 longer hours than those fixed by the order or under conditions of labor prohibited by the order is
26 unlawful.” Paragraph 4 of the applicable IWC Wage Orders require the payment of minimum
27 wages for all hours worked, and that all wages earned in a pay period be paid during that period.
28 Defendants’ policies and practices violated these IWC Wage Order requirements. Under Section

1 20(A) of the applicable IWC Wage Orders, Plaintiff and the Class members are entitled to recover
2 civil penalties, in addition to other penalties, for each underpaid Employee for violation of Section
3 4 of the IWC Wage Orders in the amount of \$50 for the initial violation and \$100 for subsequent
4 violations during each relevant pay period when Defendants failed wages for all hours worked.
5 These violations also give rise to violations of Labor Code §§ 203 and 226.

6 66. 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 67. Wherefore, Plaintiff and the Employee Class members are entitled to recover the
10 unpaid minimum wages (including double minimum wages) and local wage ordinance wages and
11 liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon
12 and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a).
13 Plaintiff and the other members of the Class further request recovery of all unpaid wages,
14 according to proof, interest, statutory costs, as well as the assessment of any statutory and/or civil
15 penalties against Defendants, in a sum as provided by the California Labor Code, including § 558,
16 and/or other applicable statutes. To the extent minimum wage compensation is determined to be
17 owed to the Class members who have terminated their employment, Defendants' conduct also
18 violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to
19 waiting time penalties under California Labor Code § 203, which penalties are sought herein on
20 behalf of these Class members. Defendants' failure to timely pay all wages owed also violated
21 Labor Code § 204 for failure to pay all wages owed twice monthly and resulted in violations of
22 Labor Code § 226 because they resulted in the issuance of inaccurate wage statements.
23 Defendants' conduct as alleged herein was willful, intentional, and not in good faith. Further,
24 Plaintiff and other Class members are entitled to seek and recover statutory costs.

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1 **SECOND CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

12 70. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
13 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
14 Industrial Welfare Commission) by failing to pay Employees for all their hours worked, including:
15 (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a
16 workday or in excess of forty hours in any workweek or for the first eight hours worked on the
17 seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked
18 in excess of twelve hours in any one day or for hours worked in excess of eight hours on any
19 seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees
20 wages for all hours worked, including by requiring off the clock work and unlawful rounding as
21 addressed above and by under-reporting actual hours worked. With work shifts generally being
22 scheduled for eight hours or more, this unpaid off the clock work resulted in Plaintiff and the
23 Class members working past eight hours on a shift, which required that they be paid at the correct
24 overtime rate of 1.5 times their regular rate.

25 71. Defendants thus had a consistent policy of not paying Employees wages for all
26 hours worked, including hours at their required regular, overtime, and double-time rates.
27 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted
28 and/or modified certain employees’ hours, including Plaintiff’s, or required Plaintiff and the Class

1 members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and the
2 Class members all earned and owed straight time and overtime wages and other benefits, in
3 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
4 Orders and guidelines set forth by the Division of Labor Standards and Enforcement.

5 72. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
6 regular wages owed and overtime compensation for all hours worked, as required by California
7 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
8 IWC Wage Order, and is therefore unlawful.

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

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

28 75. Employees have been damaged by these violations of California Labor Code §§

1 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
2 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less than
3 \$100 for causing Employees “to work for longer hours than those fixed, or under conditions of
4 labor prohibited by an order of the commission” or if the employer pays “a wage less than the
5 minimum fixed by an order of the commission” or “violates...any provision of this chapter or any
6 order or ruling of the commission.”

7 76. Consequently, pursuant to the California Labor Code, including Labor Code §§
8 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders,
9 including paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full
10 amount of all their unpaid wages and overtime compensation for all their hours worked, with
11 interest, plus their reasonable attorneys’ fees and costs, as well as the assessment of any statutory
12 penalties against Defendants, and each of them, and any additional sums as provided by the Labor
13 Code and/or other statutes.

14 **THIRD CAUSE OF ACTION**

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

16 **(Against All Defendants)**

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

19 78. Employees regularly worked shifts greater than five hours and in some instances,
20 greater than ten hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC
21 Wage Order, an employer may not employ someone for a shift of more than five hours without
22 providing her or her with a meal period of not less than thirty minutes or for a shift of more than
23 ten hours without providing her or her with a second meal period of not less than thirty minutes.

24 79. Defendants failed to provide Employees with meal periods as required under the
25 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
26 to work or to otherwise remain under Defendants’ control during meal periods, or Defendants
27 provided them after Employees worked beyond the fifth hour of their shifts or Employees
28 otherwise had them shortened and interrupted by work demands and requirements to remain under

1 Defendants' control. Furthermore, upon information and belief, on the occasions when Employees
2 worked more than ten hours in a given shift, they did so without receiving a second uninterrupted
3 thirty-minute meal period as required by law.

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

8 81. Moreover, Defendants failed to compensate Employees for each meal period not
9 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
10 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
11 employee a meal period in accordance with this section, the employer shall pay the employee one
12 hour of pay at the employee's regular rate of compensation for each workday that the meal period
13 is not provided. Defendants failed to compensate the Employees in the Class for each meal period
14 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
15 and 20 of the applicable IWC Wage Orders. To the extent Defendants did pay any meal period
16 premium, upon information and belief they failed to include all forms of remuneration, including
17 bonuses, in the regular rate used to calculate and pay the premium.

18 82. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
19 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
20 to one hour of wages at their effective hourly rates of pay for each meal period not provided or
21 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory
22 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and
23 other statutes and applicable IWC Wage Order paragraphs.

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1 **FOURTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

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

18 86. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage
19 Orders provide that if an employer fails to provide an employee rest period in accordance with this
20 section, the employer shall pay the employee one hour of pay at the employee's regular rate of
21 compensation for each workday that the rest period is not provided.

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

25 88. Defendants failed to authorize and permit Plaintiff and the Class members to take
26 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
27 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
28 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs

1 12 and 20 of the applicable IWC Wage Orders. To the extent Defendants did pay any rest break
2 premium, upon information and belief they failed to include all forms of remuneration, including
3 bonuses, in the regular rate used to calculate and pay the premium.

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

9 **FIFTH CAUSE OF ACTION**
10 **VIOLATION OF LABOR CODE § 226(a)**
11 **(Against All Defendants)**

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

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

21 92. Defendants also failed to provide Plaintiff and the similarly situated Employee
22 Class members with accurate itemized wage statements in writing, as required by the Labor Code
23 and paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to
24 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
25 including by failing to pay for all hours worked and due to unlawful rounding, failure to pay for all
26 overtime hours worked at the correct rate of pay and for providing deficient meal periods and rest
27 breaks, all of which Defendants knew or reasonably should have known were owed to the
28 Employees, as alleged above.

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

12 94. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
13 and intentional failure to provide them with the wage and hour statements as required by law and
14 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
15 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
16 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
17 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the
18 wage statement alone one or more of the following: (i) The amount of the gross wages or net
19 wages paid to the employee during the pay period or any of the other information required to be
20 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
21 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
22 wages paid to the employee during the pay period, (iii) The name and address of the employer
23 and, (iv) The name of the employee and only the last four digits of his or her social security
24 number or an employee identification number other than a social security number. For purposes of
25 Labor Code § 226(e) "promptly and easily determine" means a reasonable person [i.e. an objective
26 standard] would be able to readily ascertain the information without reference to other documents
27 or information.

28 95. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers

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

8 96. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
9 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
10 Class suffered injuries, including among other things confusion over whether they received all
11 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
12 them to make mathematical computations to analyze whether the wages paid in fact compensated
13 them correctly for all hours worked.

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

21 **SIXTH CAUSE OF ACTION**
22 **VIOLATION OF LABOR CODE § 221**
23 **(Against All Defendants)**

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

26 99. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or
27 receive from an employee any part of wages theretofore paid by said employer to said employee.”
28 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and

1 public policy, an employer must timely pay its employees for all hours worked. Defendants failed
2 to do so.

3 100. Defendants unlawfully received and/or collected wages from the Employees in the
4 Class by implementing a policy understating the hours worked by Employees, by requiring off the
5 clock work and unlawful rounding and by failing to pay overtime and premiums at the required
6 and correctly calculated regular rate, and by automatically deducting time for meal periods when
7 they were not lawfully provided, as alleged above.

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

10 **SEVENTH CAUSE OF ACTION**
11 **VIOLATION OF LABOR CODE § 204**
12 **(Against All Defendants)**

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

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

1 following the close of the payroll period.

2 104. All wages due and owing to Plaintiff and the Class members, including as required
3 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
4 required by Labor Code § 1194 and other sections became due and payable to each employee in
5 each pay period that he or he was not provided with a meal period or rest period or paid straight or
6 overtime wages to which he was entitled. Additionally, the wage statements issued by Defendants
7 failed to list all hours worked at the applicable rates and undercompensated Plaintiff and the Class
8 members, thus giving rise to further failure to timely pay wages violations.

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

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

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

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

28 108. Plaintiff and numerous Class members are no longer employed by Defendants; they

1 either quit Defendants' employ or were fired therefrom.

2 109. Defendants failed to pay these Employees all wages due and certain at the time of
3 termination or within seventy-two hours of resignation, as addressed in detail above.

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

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

14 112. 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. Also, under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are
22 subject to a fine of not less than \$100 for causing Employees "to work for longer hours than those
23 fixed, or under conditions of labor prohibited by an order of the commission" or if the employer
24 pays "a wage less than the minimum fixed by an order of the commission" or "violates...any
25 provision of this chapter or any order or ruling of the commission."

26 113. 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 **NINTH CAUSE OF ACTION**

3 **FAILURE TO PAY VACATION WAGES (LABOR CODE § 227.3)**

4 **(Against All Defendants)**

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

7 115. California Labor Code § 227.3 provides: “Unless otherwise provided by a
8 collective-bargaining agreement, whenever a contract of employment or employer policy provides
9 for paid vacations, and an employee is terminated without having taken off his vested vacation
10 time, all vested vacation shall be paid to her as wages at his final rate in accordance with such
11 contract of employment or employer policy respecting eligibility or time served; provided,
12 however, that an employment contract or employer policy shall not provide for forfeiture of vested
13 vacation time upon termination. The Labor Commissioner or a designated representative, in the
14 resolution of any dispute with regard to vested vacation time, shall apply the principles of equity
15 and fairness.”

16 116. At all relevant times during the applicable limitations period, Plaintiff and the Class
17 members accrued vacation time and paid time off during their employment with Defendants. As a
18 result of their reimbursement policies and practices, Plaintiff is informed and believes and thereon
19 alleges that Defendants failed to reimburse them for all accrued vacation and paid time off wages.

20 117. By reason of the above, Plaintiff and the Class members are entitled to restitution
21 for all unpaid amounts due and owing to within four years of the date of the filing of the
22 Complaint until the date of entry of judgment.

23 118. Plaintiff, on behalf of herself and the members of the Class, seeks interest thereon
24 pursuant to California Labor Code § 218.6, costs pursuant to California Labor Code § 218.6, and
25 reasonable attorneys’ fees pursuant to California Code of Civil Procedure § 1021.5.

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1 **TENTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

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

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

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

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

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

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PROVIDE SUITABLE SEATING LAB. CODE § 1198; 8 C.C.R. § 11070(7)**

25 **(Against All Defendants)**

26 126. Plaintiffs incorporate by reference every allegation in this complaint as if fully set
27 forth herein. Labor Code Section 1198 provides that it is illegal to employ an employee for
28 "longer hours than those fixed by the [applicable wage order] or under conditions of labor

1 prohibited by the [applicable wage] order.”

2 127. The applicable Wage Order provides that “[a]ll working employees *shall* be
3 provided with suitable seats when the nature of the work reasonably permits the use of seats.” *Id.*
4 § 11070(14)(A) (emphasis added). Further, “[w]hen the employees are not engaged in the active
5 duties of their employment and the nature of the work requires standing, an adequate number of
6 suitable seats *shall* be placed in reasonable proximity to the work area and employees shall be
7 permitted to use such seats when it does not interfere with the performance of their duties.” *Id.*
8 § 11070(14)(B) (emphasis added).

9 128. Defendants’ policy prohibiting employees from sitting while working violates the
10 applicable Wage Order.

11 **TWELFTH CAUSE OF ACTION**

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

13 **(Against All Defendants)**

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

16 130. Plaintiff is informed and believes and based thereon alleges that throughout the
17 period applicable, Defendants required Plaintiff and the Class Members to pay for necessary work-
18 related expenses they incurred. Defendants required Plaintiff and the Class Members to use their
19 cellular phones to conduct work-related business. Plaintiff and the Class Members were also
20 required to use of their own vehicles for required work related travel without mileage
21 reimbursement, and were required to purchase other necessary tools and equipment, including but
22 not limited to medical supplies, such as a stethoscope and oxygen monitor. Plaintiff and the Class
23 Members must be reimbursed for these necessary business expenses under Labor Code § 2802 and
24 Defendants systematically failed to do so.

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

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

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

THIRTEENTH CAUSE OF ACTION

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

(Against All Defendants)

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

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

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

137. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair

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

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

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

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

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

28 142. By the conduct alleged herein, Defendants have engaged and continue to engage in

1 a business practice which violates California and federal law, including but not limited to, the
2 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
3 Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this Court
4 should issue declaratory and other equitable relief pursuant to California Business & Professions
5 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
6 competition, including restitution of wages wrongfully withheld.

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

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

16 **FOURTEENTH CAUSE OF ACTION**

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

18 **(Against All Defendants)**

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

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

25 147. In failing to pay Aggrieved Employees minimum wages and overtime, not
26 providing proper meal and rest periods, failing to provide accurate itemized wage statements, and
27 failing to pay Employees wages upon termination or timely upon resignation, all discussed above,
28 Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required

1 under Labor Code § 204. Defendants also failed to maintain records showing accurate hours
2 worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and
3 paragraph 7 of the applicable IWC Wage Orders.

4 148. As such, Employees seek wages and penalties under Labor Code §§ 2698
5 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code §
6 2699.5, including the penalty provisions, without limitation, based, inter alia, on the following
7 California Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512,
8 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 et seq.

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

14 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
15 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
16 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
17 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
18 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
19 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
20 to Labor Code § 2699(g)(1);

21 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
22 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
23 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
24 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
25 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
26 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
27 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
28 pursuant to Labor Code § 2699(g)(1);

1 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
2 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
3 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
4 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
5 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
6 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
7 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
8 providing inaccurate wage statements and failing to maintain records as required under Labor
9 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
10 Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a
11 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
12 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
13 citation, ...";

14 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
15 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
16 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
17 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
18 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
19 § 2699(g)(1);

20 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
21 Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the
22 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
23 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
24 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
25 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs
26 pursuant to Labor Code § 2699(g)(1);

27 (f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For
28 Defendants' failure to provide Employees with all their required and earned sick days and all their

COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(g) Failure to Provide Suitable Seating: For the above addressed violations of paragraph 14 of the applicable IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and the civil and statutory penalties available and applicable under Labor Code § 2699(f)(2) and paragraphs 14 and 20 of the applicable IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

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

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

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

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare

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.

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

151. Plaintiff has exhausted his administrative remedies by submitting a certified letter to the LWDA and Defendants on May 23, 2024 (LWDA-CM-1030195-24) addressing in detail the specific provisions of the Labor Code Defendants have violated and addressing the facts and legal theories to support the alleged violations and requested penalties. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the postmark 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.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no 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 damages and restitution for failure to reimburse all reasonable and necessary
10 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

11 12. For restitution for unfair competition pursuant to Business & Professions Code
12 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

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

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

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

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

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

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

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

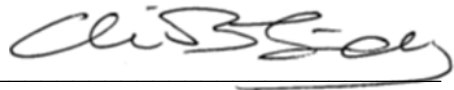
22 20. For an award of attorneys' fees; and

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

24 DATED: September 11, 2024

D.LAW, INC.

25
26 By



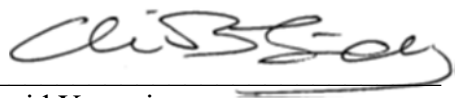
David Yeremian
Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Noel Nicole Le Var
and all others similarly situated

DEMAND FOR JURY TRIAL

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

DATED: September 11, 2024

D.LAW, INC.

By 

David Yeremian
Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Noel Nicole Le Var
and all others similarly situated

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

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

On September 11, 2024, I served the foregoing: **FIRST AMENDED CLASS ACTION COMPLAINT** on Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Grace Y. Horoupian
ghoroupian@fisherphillips.com
Corina Johnson
cjohnson@fisherphillips.com
Fisher & Phillips LLP
2050 Main Street, Suite 1000
Irvine, CA 92614

*Attorney for Defendant,
Banning SNF Healthcare, LLC*

James A. Bowles
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Los Angeles, California 90071-3147

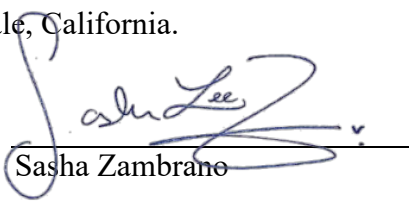
*Attorneys for Defendant,
Mount Megiddo, LLC*

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

[X] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above transmission.

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

Executed on September 11, 2024, at Glendale, California.


Sasha Zambrano

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE Branch Name: Historic Court House Mailing Address: 4050 Main Street City, State and Zip Code: Riverside CA 92501	
SHORT TITLE: LE VAR vs BANNING SNF HEALTHCARE, LLC NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: CVRI2402899

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of RIVERSIDE. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Legal Connect
 Reference Number: 10575495_2024_09_11_10_21_49_735_7
 Submission Number: 24RSCR00872402
 Court Received Date: 09/11/2024
 Court Received Time: 10:39 am
 Case Number: CVRI2402899
 Case Title: LE VAR vs BANNING SNF HEALTHCARE, LLC
 Location: Historic Court House
 Case Type: Civil
 Case Category: Unlimited Civil Other Employment
 Jurisdictional Amount: Over \$35,000
 Notice Generated Date: 09/12/2024
 Notice Generated Time: 12:52 pm

Documents Electronically Filed/Received

Status

Amended Complaint

Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: Legal Connect
 Contact: Legal Connect
 Phone: (800) 909-6859