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Case #24CV441617
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

VALREY DO on behalf of herself and all
others similarly situated, and the general
public,

Plaintiff,

v.

RECOR MEDICAL, INC., a Delaware
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 24CV441617

Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1197.1 and 1198);
4. Failure to Pay Proper Vacation Wages (Lab. Code § 227.3);
5. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
6. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and
8. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff VALREY DO (“Plaintiff”), on behalf of herself, all others similarly situated, the State
2 of California, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendants RECOR
5 MEDICAL, INC., a Delaware Corporation; and DOES 1 through 50, inclusive, (collectively referred
6 to as “Defendants”) for alleged violations of the California Labor Code and California Business and
7 Professions Code. As set forth below, Plaintiff alleges that Defendants have:

- 8 a. failed to provide lawful meal periods;
9 b. failed to provide lawful rest periods;
10 c. failed to properly pay premium wages for missed meal and rest periods;
11 d. failed to pay all wages owed, including minimum and overtime wages, for all time
12 worked;
13 e. failed to pay proper vacation wages;
14 f. failed to provide accurate wage statements;
15 g. failed to timely pay all final wages owed following separation of employment.

16 Based on these alleged Labor Code violations, Plaintiff now brings this class and
17 representative action to recover unpaid wages, liquidated damages, civil and statutory penalties,
18 restitution, and related relief on behalf of herself, all others similarly situated, and the general public.

19 **JURISDICTION AND VENUE**

20 2. This Court has subject matter jurisdiction to hear this case because the monetary
21 damages and restitution sought by Plaintiff from Defendants’ conduct exceeds the minimal
22 jurisdiction of the Superior Court of the State of California.

23 3. Venue is proper in the County of Santa Clara pursuant to Code of Civil Procedure
24 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions
25 that are the subject matter of this Complaint occurred therein and/or each defendant is found,
26 maintains offices, transacts business and/or has an agent therein.

27 4. Venue is proper in Santa Clara County because Defendants’ have at all times alleged
28 herein, conducted business in Santa Clara County, and throughout California. As such, venue is

proper in any county in California.

PARTIES

5. Plaintiff VALREY DO is, and was at all relevant times mentioned herein, an individual residing in the State of California.

6. Plaintiff is informed and believes, and thereupon alleges that Defendant RECOR MEDICAL, INC., is, and was at all relevant times mentioned herein, a Delaware corporation doing business in the State of California.

7. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants when ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously named defendants are responsible in some manner for the occurrences, acts and omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE defendants when ascertained.

8. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some or all of the defendants were the representatives, agents, employees, partners, directors, associates, joint venturers, joint employers, owners, principals or co-participants of some or all of the other defendants, and in doing the things alleged herein, were acting within the course and scope of such relationship and with the full knowledge, consent, and ratification by such other defendants.

9. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and conspired with one another, and aided and abetted one another to accomplish the occurrences, acts and omissions alleged herein.

10. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable classes defined below and because Plaintiff is

unaware of any difficulties likely to be encountered in managing this case as a class action.

11. **Relevant Time Period:** The relevant time period is defined as the time period beginning four years prior to the filing of this action until judgment is entered.

- a. **Hourly Employee Class:** All persons employed by Defendants, collectively or separately, and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions in California four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Hourly Employee Class”).
- b. **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked in a shift in excess of five hours during the four years prior to the filing of this action and ending on the date that final judgment is entered in this action.
- c. **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked a shift of at least three and one-half (3.5) hours the four years prior to the filing of this action and ending on the date that final judgment is entered in this action.
- d. **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members who separated from their employment with Defendants during the period beginning three years before the filing of this action and ending when final judgment is entered.
- e. **Wage Statement Class:** All persons employed by Defendants in California during the period beginning one year before the filing of this action and ending when final judgment is entered.
- f. **UCL Class:** All **Hourly Employee Class** and **Expense Reimbursement Class** members employed by Defendants in California during the four years prior to the filing of this action and ending on the date that final judgment is entered in this action.

12. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into sub-classes and/or by limitation to particular issues.

13. **Numerosity:** The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of class members, Plaintiff is informed and believes, and thereupon alleges that the actual number exceeds the minimum required for numerosity under California law.

14. **Commonality and Predominance:** Common questions of law and fact exist as to all class members and predominate over any questions which affect only individual class members. These common questions include, but are not limited to:

- a. Whether Defendants maintained a policy or practice of failing to provide

- employees with their meal periods;
- b. Whether Defendants maintained a policy or practice of failing to provide employees with their rest periods;
 - c. Whether Defendants failed to pay premium wages to class members when they have not been provided with meal and rest periods at the appropriate rates of pay;
 - d. Whether Defendants failed to pay minimum and/or overtime wages to class members for all time worked;
 - e. Whether Defendants failed to provide class members with accurate written wage statements as a result of providing them with written wage statements with inaccurate entries for, among other things, amounts of gross and net wages, and total hours worked;
 - f. Whether Defendants applied policies or practices that resulted in late and/or incomplete final wage payments;
 - g. Whether Defendants are liable to class members for waiting time penalties under Labor Code section 203; and
 - h. Whether class members are entitled to restitution of money or property that Defendants may have acquired from them through unfair competition.

15. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff is informed and believes, and thereupon alleges that Defendants have a policy or practice of failing to comply with the California Labor Code and Business and Professions Code as alleged in this Complaint.

16. **Adequacy of Class Representative:** Plaintiff is an adequate class representative and has no interests that are adverse to, or otherwise conflict with, the interests of absent class members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly and adequately represent and protect the interests of the other class members.

17. **Adequacy of Class Counsel:** Plaintiff's counsel is adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent class members, are experienced in wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf of

1 Plaintiff and absent class members.

2 18. **Superiority:** A class action is vastly superior to other available means for fair and
3 efficient adjudication of the class members' claims and would be beneficial to the parties and the
4 Court. Class action treatment will allow a number of similarly situated persons to simultaneously and
5 efficiently prosecute their common claims in a single forum without the unnecessary duplication of
6 effort and expense that numerous individual actions would entail. In addition, the monetary amounts
7 due to many individual class members are likely to be relatively small and would thus make it
8 difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a
9 class action will serve an important public interest by permitting class members to effectively pursue
10 the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent
11 or contradictory judgments inherent in individual litigation.

12 **GENERAL ALLEGATIONS**

13 19. Plaintiff worked for Defendants as a non-exempt employee during the relevant and
14 statutory periods.

15 20. Defendants had a common policy and practice of systemically failing to pay Plaintiff
16 and Class Members proper wages and overtime for all hours worked, at the proper rates of pay. First,
17 Defendants implemented an unlawful time-rounding policy and practice which rounded down and
18 reduced the actual working hours recorded by Plaintiff and Class Members, and upon which their pay
19 was based, and generally did so to the detriment of the Plaintiff and Class Members, and these
20 unlawfully rounded time entries were inputted into Defendants' payroll system from which wage
21 statements and payroll checks were created. Defendants did so with the ostensible intent of paying
22 Plaintiff and Class members only for the hours they were scheduled to work, rather than the hours
23 they were actually under Defendants' control. Plaintiff contends this policy is not neutral and results,
24 over time, to the detriment of the Plaintiff and Class members by systematically undercompensating
25 them.

26 21. Next, Plaintiff and Class Members were also consistently required to perform work,
27 off-the-clock, for which they were not paid wages. Specifically, Plaintiff and Class Members were
28 systemically required to perform pre-shift work related tasks, prior to clicking in, including having to

1 arrive to work early and badge to enter the work premises. Additionally, Plaintiff and Class Members
2 were regularly required to stay at work, after clocking out, and attend mandatory work meetings. The
3 forgoing and uncompensated working time was under the direction and control of Defendants, for
4 which no wages were paid.

5 22. This uncompensated time caused Plaintiff and Class Members to work in excess of
6 eight (8), ten (10) and/or twelve (12) hours a day and/or forty (40) hours a week, entitling Plaintiff
7 and Class Members to minimum and overtime wages, which they were systemically denied.

8 23. Defendants had a common policy and practice of systemically denying Plaintiff and
9 Class Members the opportunity to take meal periods in compliance with the California Law.
10 Specifically, Plaintiff and Class Members were systemically denied the opportunity to take timely
11 meal periods prior to the completion of their fifth hour of work.

12 24. Plaintiff and Class Members were not provided with meal periods of at least thirty (30)
13 minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal
14 period as part of each work shift; (2) no formal written meal policy that encouraged employees to
15 take their meal periods, or that advised Class Members of their meal and rest period rights; and (3)
16 Defendants' practice of requiring putative class members to continue working through their meal and
17 rest periods due to the excessive workload.

18 25. Defendants had a common policy and practice of systemically denying Plaintiff and
19 Class Members the opportunity to take rest periods in compliance with the California Law. Plaintiff
20 and Class Members were not provided with rest periods of at least ten (10) minutes for each four (4)
21 hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest
22 period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; (2)
23 Defendants' lack of a written rest period policy that encouraged employees to take their rest periods,
24 or that properly advised Plaintiff and Class Members of their rest period rights; and (3) Defendants'
25 policy and practice of requiring putative class members to continue working through their rest breaks
26 due to the excessive workload.

27 26. Furthermore, Defendants failed to pay Plaintiff and Class Members premium pay
28 wages at their appropriate regular rates of pay for each meal and rest period denied.

1 27. Plaintiff and Class Members were not provided with accurate wage statements as
2 mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage
3 statements as “a detachable part of the check, draft, or voucher paying the employee’s wages, or
4 separately if wages are paid by personal check or cash, an accurate itemized statement in writing.”
5 Additionally, the wage statements issued to Plaintiff and Class Members were not recorded in “ink
6 or other indelible form.”

7 28. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages
8 earned” were not accurately reflected in that: all hours worked, including overtime, were not included.

9 29. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked
10 by the employee” were not accurately reflected in that: all hours worked, including overtime, were
11 not included.

12 30. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned”
13 were not accurately reflected in that: all hours worked, including overtime, were not included.

14 31. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
15 hourly rates in effect during the pay period and the corresponding number of hours worked at each
16 hourly rate by the employee” were not accurately reflected in that: all hours worked, including
17 overtime, were not included.

18 32. Furthermore, Defendants failed to provide Plaintiff and Class Members with paper pay
19 stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE Opinion Letters.
20 Plaintiff’s and Class Members’ wage statement were only provided in electronic format in violation
21 of Labor Code § 226.

22 33. Finally, Defendants had a common policy and practice of systemically failing to pay
23 Plaintiff and Class Members the requisite and accrued vacation time pay in accordance with
24 California Law. Specifically, Plaintiff and Class Members accrued vested vacation time and/or paid
25 time off. However, Defendants failed to pay all accrued vacation time and/or paid time off owed to
26 Plaintiff and Class Members upon their separation from employment.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

3 **(Lab. Code §§ 226.7, 512, 1174, and 1198)**

4 **(Plaintiff and Meal Period Sub-Class)**

5 34. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if
6 fully alleged herein.

7 35. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been
8 non-exempt employees of Defendant entitled to the full meal period protections of both the Labor
9 Code and the applicable Industrial Welfare Commission Wage Order.

10 36. Labor Code section 512 and Section 11 of the applicable Industrial Welfare
11 Commission Wage Order impose an affirmative obligation on employers to provide non-exempt
12 employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period
13 of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty
14 minutes for each work period of ten hours.

15 37. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare
16 Commission Wage Order (“Wage Order”) both prohibit employers from requiring employees to work
17 during required meal periods and require employers to pay non-exempt employees an hour of
18 premium wages on each workday that the employee is not provided with the required meal period.

19 38. Compensation for missed meal periods constitutes wages within the meaning of Labor
20 Code section 200.

21 39. Labor Code section 1198 makes it unlawful to employ a person under conditions that
22 violate the applicable Wage Order.

23 40. Section 11 of the applicable Wage Order states:

24 No employer shall employ any person for a work period of more than
25 five (5) hours without a meal period of not less than 30 minutes, except
26 that when a work period of not more than six (6) hours will complete
27 the day’s work the meal period may be waived by mutual consent of
28 the employer and employee. Unless the employee is relieved of all duty
during a 30 minute meal period, the meal period shall be considered an
‘on duty’ meal period and counted as time worked. An ‘on duty’ meal
period shall be permitted only when the nature of the work prevents an
employee from being relieved of all duty and when by written

1 agreement between the parties an on-the-job paid meal period is agreed
2 to. The written agreement shall state that the employee may, in writing,
revoke the agreement at any time.

3 41. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
4 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**
5 members were not subject to valid on-duty meal period agreements with Defendants.

6 42. Plaintiff alleges that, at all relevant times during the applicable limitations period,
7 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
8 **Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5)
9 hour work period, as required by Labor Code section 512 and the applicable Wage Order.
10 Specifically, Plaintiff and **Meal Period Sub-Class** Members were systemically denied the
11 opportunity to take timely meal periods prior to the completion of their fifth hour of work.

12 43. Plaintiff alleges that, at all relevant times during the applicable limitations period,
13 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
14 **Class** members when they worked five (5) hours without clocking out for any meal period.

15 44. Moreover, Defendants written policies fail to inform Meal period Class Members of
16 their meal period rights under the Labor Code and applicable Wage Orders.

17 45. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
18 **Class** members additional premium wages, and/or were not paid premium wages at the employees'
19 regular rates of pay when required meal periods were not provided.

20 46. Pursuant to Labor Code section 204, 218.6, 226.7 and 512, Plaintiff, on behalf of
21 herself and the **Meal Period Sub-Class** members, seeks to recover unpaid premium wages, interest
22 thereon, and costs of suit.

23 47. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
24 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and the
25 **Meal Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

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1 rest breaks for shifts of six (6) hours or more; (2) Defendants' lack of a written rest period policy that
2 encouraged employees to take their rest periods, or that properly advised Plaintiff and **Rest Period**
3 **Sub-Class** members of their rest period rights; and (3) Defendants' policy and practice of requiring
4 putative class members to continue working through their rest breaks due to the excessive workload.

5 56. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class**
6 members additional premium wages when required rest periods were not provided.

7 57. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiff, on behalf of herself
8 and **Rest Period Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and
9 costs of suit.

10 58. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
11 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Rest**
12 **Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

15 **(Lab. Code §§ 223, 510, 1194, 1197 and 1198)**

16 **(Plaintiff and Hourly Employee Class)**

17 59. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
18 herein.

19 60. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have been
20 non-exempt employees of Defendants entitled to the full protections of the Labor Code and the
21 applicable Wage Order.

22 61. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
23 which an employee is subject to the control of the employer, and includes all the time the employee
24 is suffered or permitted to work, whether or not required to do so."

25 62. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
26 employees at least the minimum wage set forth therein for all hours worked, which consist of all hours
27 that an employer has actual or constructive knowledge that employees are working.

28 63. Labor Code section 1194 invalidates any agreement between an employer and an

1 employee to work for less than the minimum or overtime wage required under the applicable Wage
2 Order.

3 64. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated
4 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition
5 to the underlying unpaid minimum wages and interest thereon.

6 65. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
7 than the minimum wage required under the applicable Wage Order for all hours worked during a
8 payroll period.

9 66. Labor Code section 1197.1 provides that it is unlawful for any employer or any other
10 person acting either individually or as an officer, agent or employee of another person, to pay an
11 employee, or cause an employee to be paid, less than the applicable minimum wage.

12 67. Labor Code section 1198 makes it unlawful for employers to employ employees under
13 conditions that violate the applicable Wage Order.

14 68. Labor Code section 204 requires employers to pay non-exempt employees their earned
15 wages for the normal work period at least twice during each calendar month on days the employer
16 designates in advance and to pay non-exempt employees their earned wages for labor performed in
17 excess of the normal work period by no later than the next regular payday.

18 69. Labor Code section 223 makes it unlawful for employers to pay their employees lower
19 wages than required by contract or statute while purporting to pay them legal wages.

20 70. Labor Code section 510 and Section 3 of the applicable Wage Order require employees
21 to pay non-exempt employees overtime wages of no less than one and one-half (1.5) times their
22 respective regular rates of pay for all hours worked in excess of eight (8) hours in one workday, all
23 hours worked in excess of forty (40) hours in one workweek, and/or for the first eight (8) hours
24 worked on the seventh consecutive day of one workweek.

25 71. Labor Code section 510 and Section 3 of the applicable Wage Order also require
26 employers to pay non-exempt employees overtime wages of no less than two (2) times their respective
27 regular rates of pay for all hours worked in excess of twelve (12) hours in one workday and for all
28 hours worked in excess of eight (8) hours on a seventh consecutive workday during the workweek.

1 72. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
2 centrally devised policies and practices to him and **Hourly Employee Class** members with respect to
3 working conditions and compensation arrangements.

4 73. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
5 **Employee Class** members for all time worked, including but not limited to, overtime hours at
6 statutory and/or agreed rates.

7 74. Plaintiff and **Hourly Employee Class** members were not paid proper wages and
8 overtime for all hours worked, at the proper rates of pay. First, Defendants implemented an unlawful
9 time-rounding policy and practice which rounded down and reduced the actual working hours
10 recorded by Plaintiff and **Hourly Employee Class**, and upon which their pay was based, and
11 generally did so to the detriment of the Plaintiff and **Hourly Employee Class**, and these unlawfully
12 rounded time entries were inputted into Defendants' payroll system from which wage statements and
13 payroll checks were created. Defendants did so with the ostensible intent of paying Plaintiff and
14 **Hourly Employee Class** members only for the hours they were scheduled to work, rather than the
15 hours they were actually under Defendants' control. Plaintiff contends this policy is not neutral and
16 results, over time, to the detriment of the Plaintiff and **Hourly Employee Class** members by
17 systematically undercompensating them.

18 75. Plaintiff and **Hourly Employee Class** members were consistently required to perform
19 work, off-the-clock for which they were not paid wages. Specifically, Plaintiff and **Hourly Employee**
20 **Class** Members were systemically required to perform pre-shift work related tasks, prior to clicking
21 in, including having to arrive to work early and badge to enter the work premises. Additionally,
22 Plaintiff and **Hourly Employee Class** Members were regularly required to stay at work, after
23 clocking out, and attend mandatory work meetings. The forgoing and uncompensated working time
24 was under the direction and control of Defendants, for which no wages were paid.

25 76. This uncompensated time caused Plaintiff and **Hourly Employee Class** members to
26 work in excess of eight (8), ten (10), and twelve (12) hours a day and/or forty (40) hours a week,
27 entitling Plaintiff and **Hourly Employee Class** members to minimum and overtime wages, which
28 they were systemically denied.

1 77. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
2 members have suffered damages in an amount, subject to proof, to the extent they were not paid the
3 full amount of wages earned during each pay period during the applicable limitations period,
4 including overtime wages.

5 78. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
6 behalf of herself and **Hourly Employee Class** members, seeks to recover unpaid straight time and
7 overtime wages, interest thereon and costs of suit.

8 79. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
9 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and
10 **Hourly Employee Class** members, seeks to recover reasonable attorneys' fees.

11 **FOURTH CAUSE OF ACTION**

12 **FAILURE TO PAY VACATION WAGES**

13 **(Lab. Code § 227.3)**

14 **(Plaintiff and Vacation Pay Class)**

15 80. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

16 81. California Labor Code section 227.3 provides:

17 Unless otherwise provided by a collective-bargaining agreement,
18 whenever a contract of employment or employer policy provides for
19 paid vacations, and an employee is terminated without having taken off
20 his vested vacation time, all vested vacation shall be paid to him as
21 wages at his final rate in accordance with such contract of employment
22 or employer policy respecting eligibility or time served; provided,
 however, that an employment contract or employer policy shall not
 provide for forfeiture of vested vacation time upon termination. The
 Labor Commissioner or a designated representative, in the resolution
 of any dispute with regard to vested vacation time, shall apply the
 principles of equity and fairness.

23 82. At all relevant times during the applicable limitations period, Plaintiff and members
24 of the **Vacation Pay Class** accrued vacation time, and/or paid time off, during their employment
25 with Defendants.

26 83. However, Defendants implemented a common policy and practice of failing to pay
27 Plaintiff and **Vacation Pay Class** members for all accrued vacation wages upon separation of
28 employment, in violation of Labor Code 227.3.

84. By reason of the above, Plaintiff and the members of the **Vacation Pay Class** are entitled to restitution for all unpaid amounts due and owing to within four (4) years of the date of the filing of the original Complaint until the date of entry of judgment.

85. Plaintiff, on behalf of herself and the members of the **Vacation Pay Class**, seeks interest thereon pursuant to California Labor Code section 218.6, costs pursuant to California Labor Code section 218.6, and reasonable attorneys' fees pursuant to California Code of Civil Procedure section 1021.5.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(Plaintiff and Wage Statement Penalties Sub-Class)

86. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

87. Labor Code section 226(a) states:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For

1 purposes of this subdivision, ‘copy’ includes a duplicate of the itemized
2 statement provided to an employee or a computer-generated record that
accurately shows all of the information required by this subdivision.

3 88. The Division of Labor Standards Enforcement (“DLSE”) has sought to harmonize the
4 “detachable part of the check” provision and the “accurate itemized statement in writing” provision
5 of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee
6 retains the right to elect to receive a written paper stub or record and that those who are provided with
7 electronic wage statements retain the ability to easily access the information and convert the electronic
8 statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006).

9 89. Plaintiff is informed and believes that, at all relevant times during the applicable
10 limitations period, Defendants have failed to provide Plaintiff and **Wage Statement Class** members
11 with written wage statements as described above. The wage statements issued to class members failed
12 to account for the unpaid minimum wages, overtime, and premium pay wages described above.

13 90. Plaintiff is informed and believes that Defendants’ failure to provide Plaintiff and
14 **Wage Statement Class** members with accurate written wage statements was intentional in that
15 Defendants have the ability to provide them with accurate wage statements but have intentionally
16 provided them with written wage statements that Defendants have known do not comply with Labor
17 Code section 226(a).

18 91. Plaintiff and **Wage Statement Class** members have suffered injuries, in that
19 Defendants have violated their legal rights to receive accurate wage statements and have misled them
20 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage
21 statements has prevented immediate challenges to Defendants’ unlawful pay practices, has required
22 discovery and mathematical computations to determine the amount of wages owed, has caused
23 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the
24 submission of inaccurate information about wages and deductions to federal and state government
25 agencies.

26 92. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of herself and **Wage**
27 **Statement Class** members, seeks the greater of actual damages or \$50.00 for the initial pay period in
28 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period

1 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
2 \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

5 **(Lab. Code §§ 201-203)**

6 **(Plaintiff and Waiting Time Penalties Sub-Class)**

7 93. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
8 herein.

9 94. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members have
10 been entitled, upon the end of their employment with Defendants, to timely payment of all wages
11 earned and unpaid before termination or resignation.

12 95. At all relevant times, pursuant to Labor Code section 201, employees who have been
13 discharged have been entitled to payment of all final wages immediately upon termination.

14 96. At all relevant times, pursuant to Labor Code section 202, employees who have
15 resigned after giving at least seventy-two (72) hours' notice of resignation have been entitled to
16 payment of all final wages at the time of resignation.

17 97. Plaintiff is informed and believes that, at all relevant times during the applicable
18 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
19 members all their final wages in accordance with the Labor Code.

20 98. Plaintiff is informed and believes that, at all relevant times during the applicable
21 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
22 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
23 sections 201 or 202 by failing to timely pay them all final wages.

24 99. Plaintiff is informed and believes, and thereupon alleges that Defendants' failure to
25 timely pay all final wages to him and **Waiting Time Penalties Sub-Class** members has been willful
26 in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201
27 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
28 requirements.

100. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of herself and **Waiting Time Penalties Sub-Class** members, seeks waiting time penalties from the dates that their final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

101. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time Penalties Sub-Class** members, seeks awards of reasonable attorneys' fees and costs.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200 *et seq.*)

(Plaintiff and UCL Class)

102. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

103. Business and Professions Code section 17200 defines “unfair competition” to include any unlawful business practice.

104. Business and Professions Code sections 17203-17204 allow a person who has lost money or property as a result of unfair competition to bring a class action in accordance with Code of Civil Procedure section 382 to recover money or property that may have been acquired from similarly situated persons by means of unfair competition.

105. California law requires employers to pay hourly, non-exempt employees for all hours they are permitted or suffered to work, including hours that the employer knows or reasonable should know that employees have worked.

106. Plaintiff and the **UCL Class** members re-allege and incorporate the FIRST, SECOND, THIRD, and FOURTH causes of action herein.

107. Plaintiff lost money or property as a result of the aforementioned unfair competition.

108. Defendants have or may have acquired money by means of unfair competition.

109. Plaintiff is informed and believes, and thereupon alleges that by committing the Labor Code violations described in this Complaint, Defendants violated Labor Code sections 225, 226.6, 226.7, 227.3, 510, 512, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, as well as

1 applicable Wage Orders, which make it a misdemeanor to commit the violations alleged herein.

2 110. Defendants have committed criminal conduct through their policies and practices of,
3 *inter alia*, failing to comport with their affirmative obligations as an employer to: provide non-exempt
4 employees with compliant meal and rest periods; pay for all hours worked at the proper rates of pay;
5 pay proper reporting time pay; and pay for all unused and accrued vested vacation hours at the proper
6 rates of pay upon separation of employment.

7 111. Defendants' unlawful conduct as alleged in this Complaint amounts to and constitutes
8 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*
9 Business and Professions Code section 17200 *et seq.* protects against unfair competition and allows
10 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,
11 unlawful or fraudulent business practice to seek restitution on his own behalf and on behalf of
12 similarly situated persons in a class action proceeding.

13 112. As a result of Defendants' violations of the Labor Code during the applicable
14 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
15 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants' conduct.

16 113. Plaintiff is informed and believes that other similarly situated persons have been
17 subject to the same unlawful policies or practices of Defendants.

18 114. Due to the unfair and unlawful business practices in violation of the Labor Code,
19 Defendants have gained a competitive advantage over other comparable companies doing business in
20 the State of California that comply with their legal obligations.

21 115. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
22 relief for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act
23 violates or is considered unlawful under any other state or federal law.

24 116. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
25 Plaintiff requests the issuance of temporary, preliminary and permanent injunctive relief enjoining
26 Defendants, and each of them, and their agents and employees, from further violations of the Labor
27 Code and applicable Wage Orders.

28 117. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiff

1 requests the issuance of temporary, preliminary and permanent injunctive relief enjoining
2 Defendants, and each of them, and their agents and employees, from further violations of the Labor
3 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seeks
4 an order permanently enjoining Defendants, and each of them, and their respective agents and
5 employees, from further violations of the Labor Code and applicable Industrial Welfare Commission
6 Wage Orders.

7 118. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
8 herself and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully
9 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
10 and unfair business practices.

11 119. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
12 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
13 reasonable attorneys' fees in connection with their unfair competition claims.

14 120. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
15 herself and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully
16 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
17 and unfair business practices.

18 121. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
19 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
20 reasonable attorneys' fees in connection with their unfair competition claims.

21 **EIGHTH CAUSE OF ACTION**

22 **CIVIL PENALTIES**

23 **(Lab. Code §§ 2698, *et seq.*)**

24 122. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

25 123. During the applicable limitations period, Defendants have violated Labor Code §§
26 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 515, 558, 558.1, 1174, 1174.5, 1182.12,
27
28

1 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699, *et seq.*¹

2 124. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of herself
3 and other current and former employees, to bring a representative civil action to recover civil penalties
4 pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not, be brought or
5 maintained as a class action pursuant to Code of Civil Procedure section 382.

6 125. Plaintiff, a former employee against whom Defendants committed one or more of the
7 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
8 within the meaning of Labor Code § 2699(c). Plaintiff was employed by Defendants as a non-exempt
9 hourly employee in California. Aggrieved Employees include all non-exempt hourly employees of
10 Defendants within the state of California from one year prior to the date of this letter and continuing
11 through the present (Plaintiff and Aggrieved Employees are collectively referred to herein as
12 “Aggrieved Employees”)

13 126. Plaintiff has complied with the procedures for bringing suit specified in Labor Code §
14 2699.3. Notice was provided to the California Labor & Workforce Development Agency (“LWDA”)
15 and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an intent to
16 investigate.

17 127. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
18 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226.7, 226(a), 227.3,
19 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, and 1198:

- 20 i. For violations of Labor Code §§ 201, 202, 203, 226.7, 227.3, 1174, 1194, and
21 1198, one hundred dollars (\$100) for each employee per pay period for each
22 initial violation and two hundred dollars (\$200) for each employee per pay
23 period for each subsequent violation (penalties set by Labor Code §
24 2699(f)(2));

26 ¹ Plaintiff hereby reserves the right to seek penalties on behalf of all Aggrieved Employees, for
27 Defendants’ violations of the applicable provisions of the Labor Code, suffered by Aggrieved
28 Employees, but not directly suffered by Plaintiff under *Huff v. Securitas Security Services USA, Inc.*
(2018) 23 Cal.App.5th 745.

- 1 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding thirty
2 (30) days' pay as waiting time (penalties set by Labor Code § 256);
- 3 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
4 employee for each initial violation that was neither willful nor intentional, two
5 hundred dollars (\$200) for each employee, plus 25% of the amount unlawfully
6 withheld from each employee, for each initial violation that was either willful
7 or intentional, and two hundred dollars (\$200) for each employee, plus twenty-
8 five percent (25%) of the amount unlawfully withheld from each employee,
9 for each subsequent violation, regardless of whether the subsequent violation
10 was either willful or intentional (penalties set by Labor Code § 210);
- 11 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
12 employee for each initial violation that was neither willful nor intentional, two
13 hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of
14 the amount unlawfully withheld from each employee, for each initial violation
15 that was either willful or intentional, and two hundred dollars (\$200) for each
16 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
17 from each employee, for each subsequent violation, regardless of whether the
18 subsequent violation was either willful or intentional (penalties set by Labor
19 Code § 225.5);
- 20 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
21 citation, two hundred and fifty dollars (\$250) for each employee for each
22 violation. Alternatively, if an initial citation or its equivalent occurred before
23 the filing of this action, one thousand dollars (\$1,000) for each employee for
24 each violation (penalties set by Labor Code § 226.3);
- 25 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
26 employee for each initial pay period for which the employee was underpaid,
27 and one hundred dollars (\$100) for each employee for each subsequent pay
28 period for which the employee was underpaid (penalties set by Labor Code §

558);

- vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each aggrieved employee for each initial violation of Labor Code § 1197 that was intentional and two hundred and fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation of Labor Code § 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code § 1197.1);
- viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable attorneys' fees and costs in connection with Plaintiff's claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general public, prays for relief and judgment against Defendants as follows:

- a. An order that the action be certified as a class action;
- b. An order that Plaintiff be appointed class representative;
- c. An order that counsel for Plaintiff be appointed class counsel;
- d. Unpaid wages and overtime;
- e. Actual damages;
- f. Liquidated damages;
- g. Unreimbursed expenses;
- h. Restitution;
- i. Declaratory relief;
- j. Pre-judgment interest;
- k. Statutory penalties;
- l. Civil penalties;
- m. Costs of suit;
- n. Reasonable attorneys' fees; and
- o. Such other relief as the Court deems just and proper.

1
2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general
4 public, prays for relief and judgment against Defendants as follows:

- 5 p. An order that the action be certified as a class action;
6 q. An order that Plaintiff be appointed class representative;
7 r. An order that counsel for Plaintiff be appointed class counsel;
8 s. Unpaid wages and overtime;
9 t. Actual damages;
10 u. Liquidated damages;
11 v. Restitution;
12 w. Declaratory relief;
13 x. Pre-judgment interest;
14 y. Statutory penalties;
15 z. Costs of suit;
16 aa. Reasonable attorneys' fees; and
17 bb. Such other relief as the Court deems just and proper.
18

19 Dated: August 20, 2024

D.LAW, INC.

20
21 

22 _____
23 Emil Davtyan
24 David Yeremian
25 David Keledjian
26 Attorneys for Plaintiff
27 VALERY DO, and the putative class
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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself, all other similarly situated, and the general public, hereby demands a jury trial on all issues so triable.

Dated: August 20, 2024

D.LAW, INC.



Emil Davtyan
David Yeremian
David Keledjian
Attorneys for Plaintiff
VALERY DO, and the putative class

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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 August 23, 2024, I served the foregoing: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Nicole Golob
Lirit A. King
FISHER & PHILLIPS LLP
21600 Oxnard Street, Suite 650
Woodland Hills, CA 91367
Phone: (818) 230-4250
Fax: (818)230-4251
Email: ngolob@fisherphillips.com
Email: king@fisherphillips.com

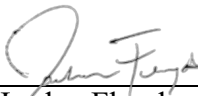
☒ **(BY MAIL)** I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary 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.

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

☒ **(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.

☒ **(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 August 23, 2024, at Glendale, California.



Jordan Floyd