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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

RAQUEL ELIZABETH CHAVEZ, an
individual on behalf of herself and all others
similarly situated,

Plaintiff,

vs.

VALLEY GREENS RETAIL OUTLET,
INC., a California corporation; MARCH
AND ASH SABRE SPRINGS, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 37-2024-00029379-CU-OE-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff RAQUEL ELIZABETH CHAVEZ (“Plaintiff”) brings this action on behalf of herself and the Class Members who are defined as “all current and former employees within the State of California who, at any time from four (4) years prior to the filing of this lawsuit, are or were employed as non-exempt hourly employees by Defendants VALLEY GREENS RETAIL OUTLET, INC., a California corporation; MARCH AND ASH SABRE SPRINGS, INC., a California corporation; and DOES 1 through 50” (all defendants being collectively referred to herein as “Defendants”).

2. Plaintiff alleges that Defendants, and each of them, violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and the California Business & Professions Code, and seeks redress for these violations.

3. Upon information and belief, Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3) endured similar violations at the hands of Defendants as the other Class Members who served in similar and related positions.

THE PARTIES

A. The Plaintiff

4. Plaintiff RAQUEL ELIZABETH CHAVEZ resides in California, during the time period relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee within the State of California.

B. The Defendants

5. Defendant VALLEY GREENS RETAIL OUTLET, INC is a California corporation and is registered with the California Secretary of State. Defendant VALLEY GREENS RETAIL OUTLET, INC has been the employer listed on the employment records issued to Plaintiff during the relevant time period that Plaintiff was employed with Defendants.

6. Defendant MARCH AND ASH SABRE SPRINGS, INC. is a California corporation and is registered with the California Secretary of State. Defendant MARCH AND ASH SABRE SPRINGS, INC. has been the employer listed on the employment records issued to

Plaintiff during the relevant time period that Plaintiff was employed with Defendants.

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

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

9. Whenever and wherever reference is made in this Complaint to any act by a defendant or defendants, such allegations and references shall also be deemed to mean the acts and failures to act of each defendant acting individually, jointly, and severally.

10. Whenever and wherever reference is made to individuals who are not named as a Defendant in this Complaint but were agents, servants, employees and/or supervisors of Defendants, such individuals at all relevant times acted on behalf of Defendants within the scope of their employment.

JURISDICTION AND VENUE

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

1 as a Class Action on behalf of similarly situated Class Members of Defendants pursuant to
2 California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial
3 district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief,
4 the obligations and liabilities giving rise to this lawsuit occurred in part in San Diego County.
5 Defendants maintain and operate facilities in San Diego County and employs Plaintiff and other
6 Class Members in San Diego County, while doing business throughout California.

7 **FACTUAL BACKGROUND**

8 12. Class Members consistently worked at Defendants behest without being paid all
9 wages due. Class Members were either not paid by Defendants for all hours worked or were not
10 paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that
11 Defendants failed to pay Class Members all wages due and owing, including by requiring off the
12 clock work, failing to incorporate non-discretionary bonuses and/or commissions into the regular
13 rate of pay used to calculate and pay for overtime compensation, double time pay, sick pay, PTO
14 pay, and meal and rest break premiums, failing to provide meal and rest breaks, failing to furnish
15 accurate wage statements, failing to timely pay wages including final wages, failing to maintain
16 accurate records, failing to pay reporting time pay, and failing to reimburse necessary business
17 expenses all in violation of various provisions of the California Labor Code and applicable Wage
18 Orders.

19 13. During the course of Class Members' employment with Defendants, they were not
20 paid all wages they were owed, including for all work performed resulting in off the clock work.
21 Class Members were required to perform pre-shift and post-shift off the clock work which they
22 were not compensated for despite being subject to Defendants' control. Specifically, Class
23 Members were required to arrive at work early in order to wait in line to clock in at the time
24 clocks. Despite Class Members' being under Defendants' control, company policy prohibited
25 them from clocking in early. Additionally, Class Members were required to assist customers while
26 off the clock. Moreover, any time there was an altercation that required law enforcement
27 intervention, employees on shift were required to stay late, off the clock in order to assist law
28 enforcement in their investigations, on behalf of Defendants.

1 14. Defendants also failed to pay Class Members all wages due and owing because
2 Defendants failed to incorporate non-discretionary, performance-based bonuses and/or
3 commissions into the regular rate of pay. Contrary to the requirements of the Labor Code and IWC
4 Wage Orders under California law, Defendants did not incorporate these non-discretionary
5 bonuses and/or commissions paid to the Class Members into the regular rate of pay Defendants
6 used to calculate and pay for overtime pay, double time pay, sick pay, PTO pay, and meal and rest
7 break premiums.

8 15. By implementing policies, programs, practices, procedures and protocols which
9 resulted in off the clock work and systematically failed to pay for all hours worked, Defendants'
10 willful actions resulted in the systematic underpayment of wages to Class Members, including
11 underpayment of overtime pay to Class Members over the relevant time period. For example, the
12 above described off the clock work addressed above caused Plaintiff to begin receiving overtime
13 pay later than they should have.

14 16. As a result of the above described requirements to work off the clock and the other
15 wage violations they endured at Defendants' hands, Class Members were not properly paid all
16 wages earned and all wages owed to them by Defendants, including when working more than
17 eight (8) hours in any given day and/or more than forty (40) hours in any given week.

18 17. As a result of Defendants' unlawful policies and practices, Class Members incurred
19 overtime hours worked for which they were not adequately and completely compensated, in
20 addition to the hours they were required to work off the clock. To the extent applicable,
21 Defendants also failed to pay Class Members at an overtime rate of 1.5 times the regular rate for
22 the first eight hours of the seventh consecutive work day in a week and overtime payments at the
23 rate of 2 times the regular rate for hours worked over eight (8) on the seventh consecutive work
24 day, as required under the Labor Code and applicable IWC Wage Orders.

25 18. Therefore, from at least four (4) 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 Class
27 Members for all hours worked and failing to pay minimum wages for all time worked, as required
28 by California law. Defendants thus failed to pay Class Members at least minimum wages for all

1 the time they worked for Defendants in violation of the Labor Code and applicable IWC Wage
2 Orders as the actual times when Class Members were under the control and direction of
3 Defendants was under reported in the hours reflected on the timekeeping records. Furthermore,
4 Defendants' willful actions resulted in the systematic underpayment of wages to Class Members,
5 including underpayment of overtime pay to Class Members over a period of time.

6 19. Therefore, from at least four (4) years prior to the filing of this lawsuit and
7 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
8 Members for all hours worked. Also, from at least four (4) years prior to the filing of this lawsuit
9 and continuing to the present, Defendants also had a consistent policy or practice of failing to pay
10 Class Members their true and correct overtime compensation at premium overtime rates for all
11 hours worked in excess of eight (8) hours a day and/or forty (40) hours a week, and double-time
12 rates for all hours worked in excess of twelve (12) hours a day, in violation of Labor Code § 510
13 and the corresponding sections of IWC Wage Orders.

14 20. Moreover, Defendant, at times, required Plaintiff and the Class Members, or some
15 of them, to, on occasion, report for a scheduled work day to be told whether work was available
16 for them or not, and when there was no work, Plaintiff and the Class members would be sent home
17 after waiting for hours. On such days when Defendant required Plaintiff and the Class Members to
18 report to work only to be sent home because work was not available, they were not paid required
19 reporting time wages for the hours they waited without receiving their regular hourly rate of pay
20 for them.

21 21. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
22 meal periods and all the legally required paid, off-duty rest periods to Class Members, as required
23 by the applicable Wage Order and Labor Code. Class Members were required to perform work as
24 ordered by Defendants for more than five (5) hours during a shift but were often required to do so
25 without receiving a lawful and timely meal break. In addition to untimely meal periods,
26 Defendants also required Class Members to respond to work demands. Defendants placed their
27 needs over Class Members lawful meal and rest breaks and this resulted in Class Members often
28 having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened

ones, because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal and/or rest break.

22. On the occasions when Class Members worked over 10 hours in a shift, Defendants also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a result, Defendants' failure to provide Class Members with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants also failed to pay Class Members "premium pay," i.e. one hour of wages at each Class Member's effective hourly rate of pay, for each meal period or rest break that Defendants failed to provide or deficiently provided.

23. Therefore, for at least four years prior to the filing of this action and through to the present, Defendants have regularly required Class Members to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in excess of (10) hours without providing them with second meal periods of not less than thirty minutes; nor did Defendants pay Class Members "premium pay," i.e. one hour of wages at each Class Member's effective hourly rate of pay, for each meal period that Defendants failed to provide or deficiently provided.

24. Meal period violations thus occurred in one or more of the following manners:

- (a) Class Members were not provided full thirty-minute duty free meal periods for work days in excess of five (5) hours and were not compensated one (1) hour's wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage Order(s);
- (b) Class Members were not provided second full thirty-minute duty free meal periods for work days in excess of ten (10) hours;
- (c) Class Members were required to work through at least part of their daily meal period(s);
- (d) Meal periods were provided after five (5) hours of continuous work during a shift; and

(e) Class Members were restricted in their ability to take a full thirty-minute meal period.

25. Class Members were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks and were not provided with one (1) hour's wages in lieu thereof. Class Members were restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, from at least four years prior to the filing of this lawsuit and continuing to the present, Defendants have consistently failed to provide Class Members with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours; or major fraction thereof, nor did Defendant pay Class Members premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

26. Rest period violations therefore arose in one or more of the following manners:

- (a) Class Members were required to work without being provided a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked and were not compensated one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not provided;
- (b) Class Members were not authorized and permitted to take timely rest periods for every four hours worked, or major fraction thereof; and
- (c) Class Members were required to remain on-duty during rest periods or otherwise had their rest periods interrupted by work demands.

27. Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements given to Class Members failed to incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to calculate and pay overtime compensation, double time pay, sick pay, PTO pay, and meal and rest break premiums. Thus, the wage statements do not provide accurate hourly rates for overtime and the statements do not comply with Labor Code § 226(a)(9). Moreover, the wage statements given to Class Members failed to accurately account for unpaid wages and overtime because their actual

1 hours worked were under-reported due to off the clock work. Additionally, the wage statements
2 given to Class Members failed to accurately account for premium pay for deficiently provided
3 meal periods and rest breaks.

4 28. From at least four (4) years prior to filing this lawsuit and continuing to the present,
5 Defendants have thus also had a consistent policy of failing to pay all wages owed to Class
6 Members at the time of their termination of within seventy-two (72) hours of their resignation, as
7 required by California wage-and-hour laws. Specifically, Class Members were not paid all regular
8 and overtime wages because Defendants failed to pay for all hours worked, required off the clock
9 work, and failed to incorporate non-discretionary bonuses and/or commissions into the regular rate
10 of pay used to calculate and pay overtime compensation, double time pay, sick pay, PTO pay, and
11 meal and rest break premiums. Additionally, Defendants failed to pay premium wages owed for
12 unprovided meal periods and rest periods, as further detailed in this Complaint. Defendants'
13 failure to pay said wages within the required time was willful within the meaning of Labor Code §
14 203.

15 29. From at least four (4) years prior to the filing of this lawsuit and continuing to the
16 present, Defendants have consistently and unlawfully collected or received wages from Class
17 Members. Defendants made payments of wages to Class Members via direct deposit into their
18 personal bank accounts. However, Defendants unlawfully removed and made deductions of said
19 wages from the bank accounts of Class Members without permission and authorization.

20 30. Additionally, from at least four (4) years prior to the filing of this lawsuit and
21 continuing to the present, Defendants have regularly required Plaintiff to incur business expenses
22 in the course of performing her required job duties for Defendants including for cell phone, office
23 supplies, and personal protective equipment. Plaintiff was required to use her personal cell phone
24 to communicate with management regarding work related matters. Upon information and belief,
25 Class Members incurred similar costs. These expenses incurred by Plaintiff and Class Members
26 were necessary and required of them in performing their assigned job duties, but Defendants failed
27 to reimburse Plaintiff and Class Members for all such necessary expenditures, thus entitling them
28 to reimbursement according to proof as required under Labor Code § 2802 and the applicable

provisions of the IWC Wage Orders.

31. In light of the foregoing, Plaintiff and Class Members bring this action pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2698 et seq., 2802 and California Code of Regulations, Title 8, section 11000 *et seq.*

32. 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

33. Plaintiff seeks to represent the Subclasses composed of and defined as follows:

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

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

c. Subclass 3. Reporting Time Pay Subclass. All Class Members who, within the applicable limitations period, were not paid reporting time pay.

d. Subclass 4. Meal Period Subclass. All Class Members who were subject to Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-free meal periods or one hour of pay at the Class Member's regular rate of pay in lieu thereof.

e. Subclass 5. Rest Break Subclass. All Class Members who were subject to Defendants' policy and/or practice of failing to authorize and permit Class Members to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Class Member's regular rate of pay in lieu thereof.

f. Subclass 6. Wage Statement Subclass. All Class Members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

1 g. Subclass 7. Termination Pay Subclass. All Class Members who, within the
2 applicable limitations period, either voluntarily or involuntarily separated from their employment
3 and were subject to Defendants’ policy and/or practice of failing to timely pay wages upon
4 termination.

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

8 i. Subclass 9. Payroll Records Subclass. All Class members who were subject to
9 Defendants’ policy and/or practice of failing to keep accurate time and wage records as required
10 by California wage-and-hour laws.

11 j. Subclass 10. Unauthorized Deductions from Wages Subclass. All Class members
12 who were subject to Defendants’ policy and/or practice of automatically deducting wages from
13 Employees’ bank accounts.

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

17 l. Subclass 12. UCL Subclass. All Class Members who are owed restitution as a
18 result of Defendants’ business acts and practices, to the extent such acts and practices are found to
19 be unlawful, deceptive, and/or unfair.

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

24 35. Defendants, as a matter of company policy, practice and procedure, and in violation
25 of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements,
26 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
27 in a practice whereby Defendants failed to correctly calculate compensation for the time worked
28 by Class Members, even though Defendants enjoyed the benefit of this work, required Class

Members to perform this work and permitted or suffered to permit this work. Defendants have uniformly denied these Class Members wages to which these employees are entitled and failed to provide meal periods or authorize and permit rest periods, in order to unfairly cheat the competition and unlawfully profit.

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

A. Numerosity

37. The potential members of the class as defined are so numerous that joinder of all the member of the class is impracticable. While the precise number of class member has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the time period relevant to this lawsuit, hundreds of employees who satisfy the Class definition within the State of California.

38. Accounting for employee turnover during the relevant time period increases this number substantially. Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all Class Members.

B. Commonality

39. There are questions of law and fact common to the Class that predominates over any questions affecting only individual Class Members. These common questions of law and fact include:

- a. Whether Defendants failed to pay Class Members minimum wages;
- b. Whether Defendants failed to pay Class Members wages for all hours worked;
- c. Whether Defendants failed to pay Class Members overtime as required under Labor Code § 510;
- d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Class Members with requisite meal periods or premium pay in lieu thereof;
- e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage

Orders, by failing to authorize and permit Class Members to take requisite rest breaks or provide premium pay in lieu thereof;

- f. Whether Defendants violated Labor Code § 226(a) by providing Class Members with inaccurate wage statements;
- g. 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;
- h. Whether Defendants' conduct was willful;
- i. 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;
- j. Whether Defendants violated Labor Code § 1194 by failing to compensate all Class Members during the relevant time period for all hours worked, whether regular or overtime;
- k. Whether Defendants violated Labor Code § 204 by failing to timely pay wages;
- l. Whether Defendants violated Labor Code § 221;
- m. Whether Defendants violated Labor Code § 2802 by failing to reimburse all necessary business expenses Defendants required them to incur in performing their job duties;
- n. Whether Defendants failed to pay Class Members for sick days;
- o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- p. Whether Defendants failed to pay reporting time pay;
- q. Whether Class Members are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

40. The claims of the named plaintiff is typical of those of Class Members. The Class Members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

D. Adequacy of Representation

41. Plaintiff will fairly and adequately represent and protect the interest of the Class Members. Counsel who represents Class Members are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

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

43. 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 Class Members 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.

44. 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

1 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
2 that any further notice is required additional media and/or mailings can be used.

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

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

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PAY MINIMUM WAGES**

19 **(Against All Defendants)**

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

22 48. Defendants failed to pay Class Members minimum wages for all hours worked.
23 Defendants had a consistent policy of misstating Class Members' time records and failing to pay
24 Class Members for all hours worked. Class Members would work hours and not receive wages,
25 including as alleged above in connection with off the clock work. Defendants, and each of them,
26 have intentionally and improperly changed, adjusted and/or modified the hours of Class Members,
27 which resulted in off the clock work and underpayment of all wages owed to Class Members over
28 a period of time, while benefiting Defendants. Additionally, Defendants failed to incorporate non-

1 discretionary bonuses and/or commissions into the regular rate of pay used to calculate and pay
2 overtime compensation, double time pay, sick pay, PTO pay, and meal and rest break premiums.
3 During the relevant time period, Defendants thus regularly failed to pay minimum wages to Class
4 Members, to their detriment. Additionally, Defendants had a consistent policy of failing to pay
5 Class Members for hours worked during alleged meal and rest periods for which Class Members
6 were consistently denied, as also addressed herein. Defendants' uniform pattern of unlawful wage
7 and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of
8 implementing a uniform policy and practice that denied accurate compensation to Class Members
9 as to minimum wage pay.

10 49. In California, employees must be paid at least the then applicable state minimum
11 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
12 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
13 timely pay its employees for all hours worked. Defendants failed to do so.

14 50. 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 51. The applicable minimum wages fixed by the commission for work during the
18 relevant period is found in Paragraph 4(A)-4(D) of the IWC Wage Orders.

19 52. 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 53. 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 and no part of this rate may
2 be used as a credit against a minimum wage obligation.

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

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

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

19 57. Pursuant to California Labor Code § 1194.2, Class Members are further entitled to
20 recover liquidated damages in an amount equal to wages unlawfully unpaid and interest thereon.

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

24 59. Wherefore, Class Members are entitled to recover the unpaid minimum wages
25 (including double minimum wages), liquidated damages in an amount equal to the minimum
26 wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant
27 to California Labor Code § 1194(a). Plaintiff and the other members of the Class further request
28 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the

assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code, including § 558, and/or other applicable statutes.

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

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

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

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

63. Defendants had a consistent policy of not paying Class Members wages for all hours worked, including by requiring off the clock work as addressed above. Defendants have also required Class Members to work through portions of their meal period. Therefore, Class Members were not properly compensated, nor were they paid overtime rates for hours worked in excess of eight hours in a given day, and/or forty hours in a given week.

64. Defendants’ failure to pay Class Members the unpaid balance of regular wages owed and overtime compensation, as required by California law, violates the provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

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

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

21 67. Class Members have been damaged by these violations of California Labor Code
22 §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

23 68. Consequently, pursuant to the California Labor Code, including Labor Code §§
24 204, 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B),
25 Defendants are liable to Class Members for the full amount of all their unpaid wages and overtime
26 compensation, with interest, plus their reasonable attorneys’ fees and costs, as well as the
27 assessment of any statutory penalties against Defendants, and each of them, and any additional
28 sums as provided by the Labor Code and/or other statutes.

THIRD CAUSE OF ACTION
FAILURE TO PAY REPORTING TIME PAY
(Against all Defendants)

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

70. Section 5(A) of the applicable Wage Order(s), requires that for “[E]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.”

71. As addressed in detail above, Defendants followed a uniform policy of failing to pay reporting time pay on in accordance with the applicable IWC Wage Order requirements. For example, Defendant required Plaintiff and the Class members, or some of them, to, on occasion, report for a scheduled work day to be told whether work was available for them or not, and when there was no work, Plaintiff and the Class members would be sent home after waiting for hours. On such days when Defendant required Plaintiff and the Class Members, or some of them, to report to work only to be sent home because work was not available, they were not paid required reporting time wages for the hours they waited without receiving their regular hourly rate of pay for them.

72. Plaintiff brings this claim for failure to pay reporting time pay as required by Section 5 of the applicable IWC Wage Orders pursuant to California Labor Code §1198, which instructs that: “the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

73. Reporting time pay constitutes wages that remain unpaid to Plaintiff and the Class members, despite the fact that they were required by Defendants to report for work and were under Defendants’ control during these times and were unable to use their time for their own purposes.

1 The failure to pay for reporting time pay is a violation of the California wage orders and is a
2 failure to pay all wages owed, which is a violation of Labor Code §1198.

3 74. Under Section 20(A) of the applicable IWC Wage Orders, Plaintiff and the Class
4 members, or some of them, are entitled to recover civil penalties, in addition to other penalties, for
5 each underpaid Employee for violation of Section 5 of the IWC Wage Orders in the amount of \$50
6 for the initial violation and \$100 for subsequent violations during each relevant pay period when
7 Defendants failed to pay reporting time pay. These reporting time pay violations also give rise to
8 violations of Labor Code §§ 203, 226, and under the PAGA.

9 75. Accordingly, Plaintiff seeks to recover unpaid reporting time pay which Defendants
10 failed to pay Plaintiff and the Class members pursuant to Sections 5(A) and 20(A) of the
11 applicable IWC Wage Orders and civil penalties and attorneys' fees and costs as may be
12 authorized.

13 **FOURTH CAUSE OF ACTION**

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

15 **(Against All Defendants)**

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

18 77. Class Members regularly worked shifts greater than five (5) hours and in some
19 instances, greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ
20 someone for a shift of more than five (5) hours without providing him or her with a meal period of
21 not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or
22 her with a second meal period of not less than thirty (30) minutes.

23 78. Defendants failed to provide Class Members with meal periods as required under
24 the Labor Code. Defendants placed their needs over Class Members lawful meal breaks and this
25 resulted in Class Members consistently having to work through their scheduled meal breaks
26 because the demands of the job would not avail them the opportunity to take a lawfully
27 uninterrupted and off-duty meal break. Furthermore, upon information and belief, on the occasions
28 when Class Members worked more than ten (10) hours in a given shift, they did so without

1 receiving a second uninterrupted thirty (30) minute meal period as required by law.

2 79. Defendants thus failed to provide Class Members with meal periods as required by
3 the Labor Code, including by not providing them with the opportunity to take meal breaks, by
4 providing them late or for less than thirty (30) minutes, or by requiring them to perform work
5 during breaks.

6 80. Moreover, Defendants failed to compensate Class Members for each meal period
7 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of
8 the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee
9 a meal period in accordance with this section, the employer shall pay the employee one (1) hour of
10 pay at the employee's regular rate of compensation for each workday that the meal period is not
11 provided. Defendants failed to compensate Class Members for each meal period not provided or
12 inadequately provided, as required under Labor Code § 226.7.

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

18 **FIFTH CAUSE OF ACTION**

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

20 **(Against All Defendants)**

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

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

26 84. Class Members consistently worked consecutive four (4) hour shifts and were
27 generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to
28 authorize and permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC

1 Wage Order, Class Members were entitled to paid rest breaks of not less than ten (10) minutes for
2 each consecutive four (4) hour shift, and Defendants failed to provide Class Members with timely
3 rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants
4 placed their needs over Class Members lawful rest breaks and this resulted in Class Members
5 consistently having to work through their scheduled rest breaks because the demands of the job
6 would not avail them the opportunity to take a lawfully uninterrupted and off-duty rest break.
7 Thus, Class Members were consistently denied of their rest breaks.

8 85. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
9 provide that if an employer fails to provide an employee rest period in accordance with this
10 section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
11 compensation for each workday that the rest period is not provided.

12 86. Defendants, and each of them, have therefore intentionally and improperly denied
13 rest periods to Class Members in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of
14 the applicable IWC Wage Orders.

15 87. Defendants failed to authorize and permit Class Members to take rest periods, as
16 required by the Labor Code. Moreover, Defendants did not compensate Class Members with an
17 additional hour of pay at each Class Member's effective hourly rate for each day that Defendants
18 failed to provide them with adequate rest breaks, as required under Labor Code § 226.7.

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

24 **SIXTH CAUSE OF ACTION**
25 **VIOLATION OF LABOR CODE § 226(a)**
26 **(Against All Defendants)**

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

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

8 91. Defendants failed to provide Class Members with accurate itemized wage
9 statements in writing, as required by the Labor Code. Specifically, the wage statements given to
10 Class Members failed to incorporate non-discretionary bonuses and/or commissions into the
11 regular rate of pay used to calculate and pay overtime compensation, double time pay, sick pay,
12 PTO pay, and meal and rest break premiums. Thus, the wage statements do not provide accurate
13 hourly rates for overtime and the statements do not comply with Labor Code § 226(a)(9).
14 Moreover, the wage statements given to Class Members failed to accurately account for unpaid
15 wages and overtime because their actual hours worked were under-reported due to off the clock
16 work. Additionally, the wage statements given to Class Members failed to accurately account for
17 premium pay for deficiently provided meal periods and rest breaks.

18 92. Throughout the liability period, Defendants intentionally failed to furnish to Class
19 Members, upon each payment of wages, itemized statements accurately showing: (1) gross wages
20 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any
21 applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the
22 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
23 only the last four digits of his or her social security number or an employee identification number
24 other than a social security number, (8) the name and address of the legal entity that is the
25 employer and (9) all applicable hourly rates in effect during the pay period and the corresponding
26 number of hours worked at each hourly rate by the employee pursuant to Labor Code § 226,
27 amongst other statutory requirements. Defendants knowingly and intentionally failed to provide
28 Class Members with such timely and accurate wage and hour statements.

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

16 94. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
17 § 226(a), Class Members suffered injuries, including among other things confusion over whether
18 they received all wages owed them, the difficulty and expense involved in reconstructing pay
19 records, and forcing them to make mathematical computations to analyze whether the wages paid
20 in fact compensated them correctly for all hours worked.

21 95. Pursuant to Labor Code §§ 226(a) and 226(e) and 1174, and the applicable IWC
22 Wage Order, paragraph 7(B), Class Members are entitled to recover the greater of all actual
23 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
24 hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate
25 penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and
26 reasonable attorneys’ fees.

27 ///

28 ///

SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 203
(Against All Defendants)

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

97. Numerous Class Members are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

98. Defendants failed to pay these Class Members all wages due and certain at the time of termination or within seventy-two (72) hours of resignation.

99. The wages withheld from these Class Members by Defendants remained due and owing for more than thirty (30) days from the date of separation from employment.

100. Defendants failed to pay Class Members without abatement, all wages as defined by applicable California law. Specifically, Plaintiff and Class Members were not paid all regular and overtime wages because Defendants failed to pay for all hours worked, required off the clock work, and failed to incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to calculate and pay overtime compensation, double time pay, sick pay, PTO pay, and meal and rest break premiums. Additionally, Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

101. Defendants' failure to pay wages, as alleged entitles these Class Members to penalties under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 204
(Against All Defendants)

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

103. Labor Code § 204 instructs that: “All wages, ...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Additionally, the requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.” As detailed above, Defendants maintained a consistently applied policy and practice of not paying all wages earned between the 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned between the 16th and the last day of the month between the 1st and 10th day of the following month. Defendants similarly failed to pay all wages earned by not more than seven calendar days following the close of the payroll period. These failures all arose from either Defendants’ failure to pay for all hours worked or failure to pay all earned commission wages.

104. All wages due and owing to Plaintiff and the Class Members, including as required under Labor Code § 510, were therefore not timely paid by Defendants, as addressed in detail above. Additionally, wages required by Labor Code § 1194 and other sections became due and payable to each Class Member in each pay period that he or she was not provided with a meal period or rest period or paid straight or overtime wages or commissions to which he or she was entitled.

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

1 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
2 penalties under paragraph 20 of the applicable IWC Wage Orders.

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

8 **NINTH CAUSE OF ACTION**

9 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**
10 **AND 1174.5**

11 **(Against All Defendants)**

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

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

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

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

24 **TENTH CAUSE OF ACTION**

25 **VIOLATION OF LABOR CODE § 221**

26 **(Against All Defendants)**

27 111. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
28 full herein.

1 112. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or
2 receive from an employee any part of wages theretofore paid by said employer to said
3 employee.”

4 113. Defendants unlawfully received and/or collected wages from employees.
5 Defendants unlawfully removed wages for medical insurance that Employees never agreed to in
6 violation of Labor Code § 221.

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

9 **ELEVENTH CAUSE OF ACTION**

10 **REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802**

11 **(Against All Defendants)**

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

14 116. Under Labor Code § 2802(a) an employer must indemnify its employees for all
15 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
16 of his or her duties, or of his or her obedience to the directions of the employer.

17 117. Defendants have regularly required Plaintiff to incur business expenses in the course
18 of performing her required job duties for Defendants including for cell phone. Plaintiff was required
19 to use her personal cell phone to communicate with management regarding work related matters.
20 Upon information and belief, Class Members incurred similar costs. These expenses incurred by
21 Plaintiff and Class Members were necessary and required of them in performing their assigned job
22 duties, but Defendants failed to reimburse Plaintiff and Class Members for all such necessary
23 expenditures. Class Members were not reimbursed for those lawful and necessary work related
24 expenses or losses incurred in direct discharge of their job duties during employment with
25 Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the
26 applicable IWC Wage Orders, paragraph 9.

27 118. As a result of the unlawful acts of Defendants, Class Members have been deprived
28 of reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,

1 plus interest and penalties thereon, attorneys' fees, and costs.

2 **TWELFTH CAUSE OF ACTION**

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

4 **(Against All Defendants)**

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

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

12 121. Plaintiff is a "person" within the meaning of Business & Professions Code
13 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
14 relief, restitution, and other appropriate equitable relief.

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

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

1 employers and their employees from competitors who lower costs to themselves by failing to
2 comply with minimum labor standards.

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

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

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

15 127. By the conduct alleged herein, Defendants have engaged and continue to engage in
16 a business practice which violates California and federal law, including but not limited to, the
17 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
18 Code including Sections 203, 204, 226, 226.7, 512, 1194, 1197, and 1198, for which this Court
19 should issue declaratory and other equitable relief pursuant to California Business & Professions
20 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
21 competition, including restitution of wages wrongfully withheld.

22 128. As a proximate result of the above-mentioned acts of Defendants, Class Members
23 have been damaged, in a sum to be proven at trial.

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

1 be necessary to restore Class Members to the money Defendants have unlawfully failed to pay.

2 **THIRTEENTH CAUSE OF ACTION**
3 **VIOLATION OF LABOR CODE § 2698, ET SEQ.**

4 **(Against All Defendants)**

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

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

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

18 132. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
19 for Defendants’ violation of Labor Code provisions included under Labor Code 2699.5, including
20 the penalty provisions, without limitation, based, inter alia, on the following California Labor
21 Code sections: 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194,
22 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, and 2698 *et seq.*

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

28 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all

1 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
2 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
3 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
4 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
5 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
6 to Labor Code § 2699(g)(1);

7 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
8 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
9 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
10 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
11 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
12 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
13 558, including sections 558(a)(1)-(3), 1199, and 2699(f)(2), and also for attorneys' fees and costs
14 pursuant to Labor Code § 2699(g)(1);

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

28 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at

1 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
2 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
3 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
4 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
5 § 2699(g)(1);

6 (e) All Alleged Violations of the IWC Wage Orders and Other Labor Code
7 Sections: For any above addressed violation of the applicable provisions of the IWC Wage
8 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §
9 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and
10 paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to
11 Labor Code § 2699(g)(1).

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

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

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

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

135. Plaintiff has exhausted his administrative remedies by sending a certified letter to the LWDA and Defendants postmarked on **June 21, 2024**, 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 Class Members 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 all unpaid reporting time pay as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Class Members 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;
7. For compensatory damages in the amount of the hourly wage made by Class Members 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 be proven;

- 1 8. For penalties pursuant to Labor Code § 226(e) for Class Members, as may be
2 proven;
- 3 9. For penalties pursuant to Labor Code § 203 for all Class Members who quit or were
4 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 5 10. For restitution and/or damages for all amounts unlawfully withheld from the wages
6 for all class members in violation of Labor Code § 204, as may be proven;
- 7 11. For restitution and/or damages for all amounts unlawfully withheld from the wages
8 for all Class Members in violation of Labor Code § 2802, as may be proven;
- 9 12. For restitution and/or damages for all amounts unlawfully withheld from the wages
10 for all class members in violation of Labor Code § 221, as may be proven;
- 11 13. For restitution for unfair competition pursuant to Business & Professions Code
12 § 17200 *et seq.*, including disgorgement or profits, as may be proven;
- 13 14. 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 15. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;
- 17 16. For other wages and penalties under the Labor Code as may be proven;
- 18 17. For all general, special, and incidental damages as may be proven;
- 19 18. For an award of pre-judgment and post-judgment interest;
- 20 19. For an award providing for the payment of the costs of this suit;
- 21 20. For an award of attorneys' fees; and
- 22 21. For such other and further relief as this Court may deem proper and just.

23 DATED: August 26, 2024

D.LAW, INC.

24
25 By: 
26 David Yermian
27 Natalie Haritoonian
28 Matthew Carraher
Attorneys for Plaintiff RAQUEL
ELIZABETH CHAVEZ, 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: August 26, 2024

D.LAW, INC.

By: 
David Yeremian
Natalie Haritounian
Matthew Carraher
Attorneys for Plaintiff RAQUEL
ELIZABETH CHAVEZ, and all others
similarly situated

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

Breton Peace, Agent for Process of Service
2835 Camino del Rio S, Suite 220
San Diego, CA 92108

[] (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.

[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.


Kathryn Perez