

1 **THE WHEELER LAW FIRM, APC**

2 Scott Ernest Wheeler (SBN 187998)

3 Justin A. Wheeler (SBN 342226)

4 250 West First Street, Suite 216

5 Claremont, California 91711

6 Telephone: (909) 621-4988

7 Facsimile: (909) 621-4622

8 E-mail: sew@scottwheelerlawoffice.com

9 jaw@scottwheelerlawoffice.com

10 *Attorney for Plaintiff and all others Similarly*
11 *Situated*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF ALAMEDA**

14 MARIA LOPEZ GENOVEVA, individually,
15 and on behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 VLS CLAYWORTH PHARMACY INC., a
19 California corporation; and DOES 1 through
20 50, inclusive,

21 Defendants.

CASE NO.: **24CV096117**

CLASS ACTION COMPLAINT

1. Willful Misclassification of Employees as Independent Contractors
2. Failure to Provide Required Meal Periods
3. Failure to Provide Required Rest Breaks
4. Failure to Pay Overtime Wages
5. Failure to Pay Minimum Wages
6. Failure to Pay Timely Wages
7. Failure to Pay All Wages Due to Discharged and Quitting Employees
8. Failure to Maintain Required Records
9. Failure to Furnish Accurate Itemized Wage Statements
10. Failure to Indemnify Employees for Necessary Business Expenditures

REPRESENTATIVE ACTION

11. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

ELECTRONICALLY FILED

Superior Court of California,

County of Alameda

10/17/2024 at 01:46:25 PM

By: Abdul Kargbo,
Deputy Clerk

1 This is a Class Action brought by Maria Lopez Genoveva, individually and on behalf of all
2 others similarly situated (“Plaintiff”), relating to systemic violations of California wage and hour
3 laws by her former employer, VLS Clayworth Pharmacy Inc., a California corporation (hereinafter
4 referred to as “Defendant”). Plaintiff makes the following allegations on information and belief,
5 except as to allegations pertaining to Plaintiff individually, which are based on her personal
6 knowledge.

7 **INTRODUCTION**

8 1. As a private, for-profit business, Defendant has implemented common policies and
9 practices that have resulted in systemic violations of California’s wage and hour laws.

10 2. Defendant hired Plaintiff and all other similarly situated individuals and assigned
11 them to work as delivery drivers for its Pharmacy located in Castro Valley, California.

12 3. Defendant maximizes profits by cutting labor costs, grossly understaffing its
13 workforce, misclassifying employees and independent contractors, denying meal and rest breaks,
14 systematically requiring off-the-clock work, and cheating employees out of minimum and overtime
15 wages and premium payments.

16 4. Defendant has intentionally misclassified Plaintiff and other non-exempt
17 employees as independent contractors to avoid treating them as employees.

18 5. Furthermore, Defendant has implemented unlawful written policies with respect to
19 meal and rest breaks. Defendant also requires its non-exempt employees, who are informed that
20 the needs of the businesses take top priority, to work through meal and rest breaks, to take
21 untimely meal periods and to remain on call during such breaks. As a result, Plaintiff and other
22 non-exempt employees have been denied the ability to take the meal and rest breaks that they were
23 and are legally entitled to take.

24 6. Defendant also failed to compensate non-exempt employees at their regular rate of
25 pay for meal and rest period premium payments, to the extent any are paid, and non-discretionary
26 bonus payments are not calculated into the regular rate of pay for non-exempt employees which
27 results in the systematic underpayment of wages to Plaintiff and other non-exempt employees.
28 Defendant willfully turns a blind eye to off-the-clock work that Plaintiff and other non-exempt

1 employees perform as a direct consequence of Defendant's inadequate staffing and imposition of
2 an unreasonable workload. Moreover, Defendant uniformly failed to pay Plaintiff and other non-
3 exempt, hourly employees proper overtime wages due the fact that it has willfully turn a blind eye
4 to off-the-clock work that Plaintiff and other non-exempt, hourly employees perform as a direct
5 consequence of Defendant's understaffing and imposition of an unreasonable workload. Finally,
6 Defendant has failed to pay final wages to Plaintiff and other non-exempt, hourly employees who
7 were employed by Defendant.

8 7. Plaintiff and other non-exempt employees similarly do not receive reimbursements
9 for the expenses they incur in the discharge of their job duties. These expenses include gas
10 mileage and insurance regarding the usage of their cars and personal cellular phone usage.

11 8. Plaintiff seeks declaratory, compensatory and other statutorily available relief for
12 herself and a Class of all current and former non-exempt employees of Defendant during the
13 applicable limitations period to compensate these workers for the wages Defendant has stolen
14 from them and to protect current and future workers from being subjected to similar unlawful
15 working conditions perpetrated by Defendant.

16 **JURISDICTION AND VENUE**

17 9. The Superior Court of the State of California has jurisdiction in this matter because
18 Plaintiff is a resident of the State of California, and Defendant is licensed to do business under the
19 laws of the State of California.

20 10. Venue is proper in this judicial district and Alameda County because Defendant
21 maintains its office and operates one or more pharmacies in Alameda County.

22 11. Venue is also proper in this judicial district and Alameda County because Plaintiff
23 was assigned to work for Defendant as a Delivery Driver for its pharmacy located in Castro
24 Valley, a city located within Alameda County. Many non-exempt, hourly employees also worked
25 for Defendant in Alameda County.

26 12. Defendant employed Plaintiff and other non-exempt, hourly employees within the
27 State of California and the unlawful acts alleged herein have a direct effect on Plaintiff and other
28 non-exempt, hourly employees.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

14. Plaintiff is informed and believes, and thereon alleges, that Defendant at all times relevant hereto was, a corporation organized and existing under the laws of the State of California. Defendant is authorized to conduct business and does conduct business in the State of California, and operates one or more pharmacies or other facilities in Alameda County.

16. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the co-Defendants, and in performing the acts mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-Defendants. Plaintiff also alleges that the acts of each Defendant are legally attributable to the other Defendants.

17. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants sued herein were, at all relevant times, the employer, owner, shareholder, principal, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the remaining Defendants, and were acting, at least in part, within the course and scope of such employment and agency, with

1 the express and implied permission, consent and knowledge, approval and/or ratification of the other
2 Defendants. The above co-Defendant, managing agents, and supervisors, aided, abetted, condoned,
3 permitted, approved, authorized, and/or ratified the unlawful acts described herein.

4 **CLASS ACTION ALLEGATIONS**

5 18. Plaintiff brings this action on behalf of herself, and the following similarly situated
6 Class of individuals (“Class members”):

7 All hourly and nonexempt employees who were employed by Defendant at
8 any time in the state of California during the relevant statute of limitations
period.

9 19. Plaintiff reserves the right to name additional Class representatives as may be
10 necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of
11 the proposed Class and/or add subclasses before the Court determines whether certification is
12 appropriate.

13 20. This action is appropriately suited for a class action because:

14 A. The proposed Class is a significant number. Plaintiff is informed and
15 believes that the proposed Class consists of at least fifty (50) current and former non-exempt
16 employees, rendering joinder impractical.

17 B. This action involves common questions of law and fact to the proposed
18 Class because the action focuses on Defendant’s systematic course of illegal payroll practices and
19 policies, which was applied to all non-exempt employees in uniform violation of the California
20 Labor Code, IWC Wage Orders, and the California Business and Professions Code, which
21 prohibits unfair business practices arising from such violations. Here are a few common questions
22 of law and fact that will drive resolution of this action:

- 23 1. Whether Defendant misclassified hourly, non-exempt employees as
24 independent contractors;
- 25 2. Whether Defendant failed to provide non-exempt employees with legally
26 compliant meal periods and rest breaks, and whether Defendant properly
27 paid premium pay at the appropriate regular rate as a result of missed and
28 non-compliant meal periods and rest breaks;

- 1 3. Whether Defendant failed to timely pay wages to non-exempt employees in
- 2 compliance with California law;
- 3 4. Whether Defendant's time rounding policy and practice is in violation of
- 4 California law;
- 5 5. Whether Defendant failed to pay overtime and minimum wages to non-
- 6 exempt employees in compliance with California law;
- 7 6. Whether Defendant failed to maintain required records and accurate wage
- 8 statements for non-exempt employees;
- 9 7. Whether Defendant failed to pay non-exempt employees all wages due, for
- 10 all hours worked, including for off-the-clock work, travel time, pre-shift and
- 11 post-shift work and COVID screening;
- 12 8. Whether Defendant failed to provide non-exempt employees with
- 13 reimbursements for expenses incurred in the discharge of their job duties;
- 14 and
- 15 9. Whether Defendant engaged in unfair and/or unlawful business practices.

16 C. Plaintiff's claims are typical of the proposed Class because Defendant
17 subjected all of its non-exempt employees to the similar and overlapping violations of the
18 California Labor Code, the applicable IWC wage order, and the California Business and
19 Professions Code.

20 D. Plaintiff is able to fairly and adequately protect the interests of all members
21 of the proposed Class because it is in her best interests to prosecute the claims alleged herein to
22 obtain full compensation due to the proposed Class for all services rendered and hours worked.
23 Plaintiff has also retained counsel that is experienced in wage and hour class action litigation.

24 ///

25 ///

26 ///

27 ///

28 ///

FIRST CAUSE OF ACTION
Willful Misclassification
[Cal. Labor Code § 226.8, 2750.3 and Applicable IWC
Wage Orders and Applicable Sections]
(On Behalf of Plaintiff and the Class Against all Defendants)

21. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 20 (A) – (D).

22. During the statute of limitations period, and contrary to California law, Defendant misclassified Plaintiff as an independent contractor as a subterfuge to avoid treating her as an employee. Defendant, as a matter of established and uniform company policy and procedure, controlled, among other things, the job duties and responsibilities of Plaintiff; the payment of wages to Plaintiff; the work schedule and time in which Plaintiff was suffered and permitted to work; the way Plaintiff dressed and presented herself during work; and the manner and/or means in which the work was performed by Plaintiff. Moreover, Defendant controlled all aspects of compensation and paid Plaintiff and similarly situated current and/or former non-exempt employees on an hourly rate basis.

23. California Labor Code § 226.8 provides that it is unlawful for any person or employer to engage in the “willful misclassification” of an individual as an independent contractor. “Willful misclassification” is defined as “avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” California Labor Code § 226.8(i)(4).

24. In *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903 (“*Dynamex*”), the California Supreme Court held that the burden of proof is on the hiring entity to establish that a worker is an independent contractor who is not entitled to protection within California’s IWC wage orders. 4 Cal.5th at 957. *Dynamex* further held that, in order for the hiring entity to satisfy the burden, it must establish each of the three factors of the ABC test:

- a. That the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; and

1 b. That the worker performs work that is outside the usual course of the hiring
2 entity's business; and

3 c. That the worker is customarily engaged in an independently established
4 trade, occupation, or business of the same nature as the work performed.

5 *Id.* at 957.

6 25. The *Dynamex* holding was subsequently codified by the California Legislature at
7 California Labor Code § 2750.3.

8 26. Defendant cannot satisfy its burden with respect to any of the three ABC factors
9 listed above or the factors as set forth in *S.G. Borello & Sons, Inc. v. Department of Industrial*
10 *Relations* (1989) 48 Cal.3d 341.

11 27. *First*, Plaintiff was under the direction and control of Defendant with regard to the
12 entire working relationship. Among other things, Plaintiff had no discretion as to the hours that she
13 worked for Defendant and was restricted by the schedule made by Defendant. Plaintiff and similarly
14 situated non-exempt employees were not permitted to cease their job duties until the work was
15 completed. Plaintiff was similarly prevented from taking meal and rest periods while performing
16 work for Defendant. Plaintiff was sometimes mandated to arrive early to work in order to prepare
17 for her shift and stay late after her shift had been completed in order to clean the workspace. Plaintiff
18 was met with hostility if she was unable to attend a shift scheduled by Defendant.

19 28. *Second*, Defendant was and is in the same or similar business as Plaintiff.

20 29. By violating *Borello*, *Dynamex* and California Labor Code §§ 226.8 and 2750.3
21 through the willful misclassification of Plaintiff, Defendant lowered their cost of doing business, by
22 among other things:

23 a. Avoiding the payment of wages and minimum wages, failing to pay
24 overtime compensation and illegally calculating overtime compensation,
25 failing to provide meal periods and rest breaks, failing to pay all wages due
26 to discharged or quitting employees, failing to maintain required records,
27 failing to provide accurate itemized wage statements, and failing to
28

1 indemnify employees for necessary expenditures and/or losses incurred in
2 discharging their duties;

- 3 b. Not reporting or paying the employer's share of federal or state payroll
4 taxes with respect to any of the funds paid to Plaintiff, as required by law;
- 5 c. Not providing or paying for Workers' Compensation insurance for Plaintiff;
- 6 d. Not providing or paying for State Disability insurance for Plaintiff; and
- 7 e. Not providing or paying for benefits to Plaintiff that other employees of
8 Defendant may have received and/or should have received.

9 30. As a proximate result of the aforementioned violations of California law committed
10 by Defendant, Plaintiff has suffered, and continues to suffer, substantial losses related to, among
11 other things, the loss of the employer's share of payroll taxes, the use and enjoyment of such
12 employee benefits, lost wages in the form of failing to receive overtime pay and minimum wage,
13 premium payments owed and due for missed meal periods and rest breaks, reimbursements owed
14 and due for expenditures incurred in the discharge of their job duties, all associated penalties, and
15 expenses and attorneys' fees in seeking to compel Defendant to fully perform its obligations under
16 state law.

17 31. Plaintiff seeks to recover reimbursement of all damages proximately resulting from
18 such misclassification and/or unlawful reductions in compensation and expense reimbursement, as
19 well as the appropriate withholding of federal, state, and local income taxes based upon a flat
20 withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-
21 l(a)(2) as amended or supplemented, and any corresponding state or local law, and the Class
22 Members' share of FICA, Medicare, and state and local employment taxes that was improperly not
23 paid by Defendant as a result of the unlawful independent contractor classification.

24 32. Defendant's failure to classify Plaintiff as an employee, in violation of California
25 law, was knowing and intentional. The decision to misclassify Plaintiff as an independent contractor
26 was made, maintained, and enforced by Defendant, and was done willfully, maliciously,
27 oppressively, and fraudulently, with the wrongful and deliberate intention of injuring Plaintiff, and
28 with a conscious disregard for the rights of Plaintiff under California law, all of which has deprived

1 Plaintiff of her property and legal rights. Therefore, in addition to all other types of relief requested
2 herein, Plaintiff is entitled to recover punitive and exemplary damages in amounts according to
3 proof at time of trial.

4 33. Pursuant to California Labor Code § 226.8, Defendant is subject to a civil penalty
5 and damages of not less than five thousand dollars (\$5,000), and up to fifteen thousand dollars
6 (\$15,000), for the willful misclassification of Plaintiff as an independent contractor. Additionally,
7 Plaintiff alleges that Defendant engaged in a pattern and practice of willfully misclassifying
8 employees as independent contractors, and therefore, Plaintiff seeks penalties and damages of not
9 less than ten thousand dollars (\$10,000) and up to twenty-five thousand dollars (\$25,000) for each
10 violation, in addition to any other penalties, damages, or fines permitted by law.

11 **SECOND CAUSE OF ACTION**

12 **Failure to Provide Required Meal Periods**

13 **[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; and All Applicable IWC**

14 **Wage Orders and Applicable Sections]**

15 **(On Behalf of Plaintiff and the Class Against all Defendants)**

16 34. Plaintiff incorporates herein by specific reference, as though fully set forth, the
17 allegations in paragraphs 1 through 33.

18 35. During the statute of limitations period, as part of Defendant's unlawful policies
19 and practices to deprive their non-exempt employees of all wages earned and due, Defendant
20 required, permitted or otherwise suffered Plaintiff and Class members to perform work during
21 their meal periods, to completely skip their meal periods, to take late and short meal periods,
22 working during meal periods, and Defendant has otherwise failed to provide the required meal
23 periods to Plaintiff and Class members as required under California Labor Code §§ 226.7, 512,
24 and § 11 of the applicable IWC Order.

25 36. Moreover, Defendant interfered with and restricted the ability of Plaintiff and
26 similarly situated non-exempt employees to take meal periods by not permitting Plaintiff and the
27 other Class members to leave their work areas when taking meal periods.

28 37. Defendant has implemented several common policies and practices that have
caused Plaintiff and Class members to systematically miss and otherwise take non-compliant meal

1 periods.

2 38. Defendant grossly understaffs its workforce such that non-exempt employees are
3 given so much work to complete that they regularly miss or take non-compliant meal periods. As
4 a direct consequence of this understaffing, Plaintiff and Class members have so much work to
5 complete within their scheduled shifts that they are forced to skip their meal periods altogether, to
6 take them after working longer than five (5) hours, to perform work during their meal periods, or
7 return to work after taking less than a thirty (30) minute meal period. Further, Defendant failed to
8 implement a meal period policy for work shifts longer than ten (10) hours or more.

9 39. Moreover, Defendant failed to implement adequate policies or procedures to
10 provide meal periods to its non-exempt employees. Among other things, Defendant overworked
11 Plaintiff and similarly situated non-exempt employees and did not adequately advise them of their
12 rights to take meal periods, and systematically denied them the opportunity to take meal periods,
13 including second meal periods during shifts of ten hours or longer.

14 40. Defendant has also violated California Labor Code §§ 226.7, all applicable wage
15 orders and applicable sections, and the California Unfair Competition Law, Cal. Bus. & Prof.
16 Code §§ 17200 *et. seq.*, by failing to compensate Plaintiff and Class members who were not
17 authorized and permitted to take a complete, timely, uninterrupted meal period, in accordance with
18 the applicable wage order, one additional hour of compensation at the proper regular rate of pay
19 for each workday that such a meal period was not authorized or permitted.

20 41. Defendant further violated California Labor Code sections 226.7, 510, 1194, 1197,
21 IWC Wage Order No. 7-2001, and all applicable IWC Wage Orders, by failing to compensate
22 Plaintiff and similarly situated non-exempt employees for all hours worked during their meal
23 periods.

24 42. As a proximate result of the aforementioned violations, Plaintiff and similarly
25 situated non-exempt employees have been damaged in an amount according to proof at trial, and
26 seek all wages earned and due, interest, penalties, expenses, and costs of suit.

27 ///

28 ///

THIRD CAUSE OF ACTION
Failure to Provide Required Rest Breaks
[Cal. Lab. Code §§ 226.7, 512; and All Applicable IWC
Wage Orders and Applicable Sections]
(On Behalf of Plaintiff and the Class Against all Defendants)

43. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 42.

44. At all times relevant herein, as part of Defendant's illegal policies and practices to deprive its non-exempt employees of all wages earned and due, Defendant failed to permit Plaintiff and Class members to take rest breaks as required under California Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Wage Order.

45. As with meal periods, Defendant's policies and practices caused Plaintiff and Class members to miss or otherwise take non-compliant rest periods by, among other things, giving them unreasonable amounts of work that had to be completed within their shift such that rest periods simply could not be taken. This was the result of systematic understaffing of its workforce. Further, as set forth above, Defendant implemented skeletal staffing policies, which resulted in the inability of Plaintiff and Class members to take compliant rest periods. In addition, Defendant did not adequately notify Plaintiff and Class members of their rights to take rest periods, and systematically denied them the opportunity to take rest periods, including all rest periods required during long shifts, which at times exceeded 12 consecutive hours.

46. Defendant further violated California Labor Code § 226.7, IWC Wage Order No. 7-2001, § 12, all other applicable IWC Wage Orders and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to pay Plaintiff and Class members who were not provided with a rest break, in accordance with the applicable wage order, one additional hour of compensation at the proper regular rate of pay for each workday that a rest break was not provided.

47. As a proximate result of the aforementioned violations, Plaintiff and Class members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses, and costs of suit.

FOURTH CAUSE OF ACTION
Failure to Pay Overtime Wages
[Cal. Lab. Code §§ 510, 1194, 1198; and All Applicable IWC
Wage Orders and Applicable Sections]
(On Behalf of Plaintiff and the Class against all Defendants)

48. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 47.

49. Pursuant to California Labor Code §§ 510, 1194, and all applicable wage orders and applicable sections, Defendant is required to compensate Plaintiff and Class members for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

50. Plaintiff and Class members are current and former direct and temporary hourly paid employees entitled to the protections of California Labor Code §§ 510, 1194, and all applicable IWC Wage Orders. During the statute of limitations period, Defendant failed to compensate Plaintiff and Class members for all overtime hours worked as required under the foregoing provisions of the California Labor Code and IWC Wage Order by, among other methods: failing to pay any overtime compensation; failing to properly calculate the regular rate of pay for the purposes of calculating overtime pay owed and due; requiring, permitting or suffering Plaintiff and Class members to work off-the-clock; illegally rounding time worked so as to deprive Plaintiff and the Class members of wages; requiring, suffering, or permitting Plaintiff and Class members to work through meal and rest periods but not compensating them for this time, failing to include this time in all hours worked; failing to pay the highest regular rate of pay based upon nondiscretionary bonus/commission payments; failing to pay for training time; editing or otherwise manipulating the overtime hours worked, failing to pay for pre-and post-shift work (including COVID screenings and donning and doffing uniforms); and other methods to be discovered.

1 51. In a short-sighted attempt to maximize profits, Defendant understaffed its
2 workforce. Not only has this practice resulted in widespread missed meal and rest breaks, but it
3 has also caused Plaintiff and Class members to perform significant amounts of work while off-the-
4 clock. Defendant knows and was aware that Plaintiff and Class members performed this work off-
5 the-clock work because managers see them doing this work well before the beginning of the start
6 and end of their scheduled shifts.

7 52. Defendant has also engaged in an unlawful time rounding practice, where the time
8 worked by Plaintiff and Class members is systematically rounded down, resulting in unpaid
9 regular and overtime wages. Defendant implement a rounding practice wherein it rounds the time
10 worked by non-exempt employees unfavorably to the Class members. Defendant pays Plaintiff
11 and Class members based on rounded time despite the fact that it maintains records of all hours
12 worked.

13 53. In violation of California law, Defendant has knowingly and willfully refused to
14 perform its obligations to compensate Plaintiff and Class members for all wages earned and all
15 hours worked at the legally required rates of pay. As a proximate result, Plaintiff and Class
16 members have suffered, and continue to suffer, substantial losses related to the use and enjoyment
17 of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel
18 Defendant to fully perform its obligations under state law, all to their respective damages in
19 amounts according to proof at time of trial, and within the jurisdiction of this Court.

20 54. Defendant's conduct described herein violates California Labor Code §§ 510, 1194,
21 1198 and all applicable IWC Wage Orders and applicable sections. Therefore, pursuant to
22 California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under
23 the California Labor Code and IWC Wage Orders, Plaintiff and Class members are entitled to
24 recover the unpaid balance of wages owed to them by Defendant, plus interest, penalties,
25 attorneys' fees, expenses, and costs of suit.

26 ///

27 ///

28 ///

FIFTH CAUSE OF ACTION
Failure to Pay Minimum Wages
[Cal. Lab. Code §§ 1194, 1197; All Applicable IWC
Wage Orders and Applicable Sections]
(On Behalf of Plaintiff and the Class against all Defendants)

55. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 54.

56. Pursuant to Cal. Lab. Code §§ 1194, 1197, and all applicable IWC Wage Orders and applicable sections, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

57. During the statute of limitations period, the hourly rates for Plaintiff and Class members were precisely at minimum wage. Based on this common practice, Defendant failed to actually pay Plaintiff and Class members minimum wages for all hours worked by requiring, permitting or suffering them to work off-the-clock, such as requiring them to work through meal, rest breaks, but not compensating them for this time, and failing to include this time in all hours worked, engaging in illegal and unlawful rounding and time entry manipulation practices, failing to pay for pre-shift work and post-shift work (including COVID screenings); and other methods to be discovered.

58. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and all applicable IWC Wage Orders and applicable sections. As a proximate result of the aforementioned violations, Plaintiff and other Class members have been damaged in an amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and any other applicable law, Plaintiff and other aggrieved employees are entitled to recover the unpaid balance of wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

///

///

///

///

SIXTH CAUSE OF ACTION
Failure to Pay Timely Wages
[Cal. Lab. Code §§ 204, 210; All Applicable IWC
Wage Orders and Applicable Sections]
(On Behalf of Plaintiff and the Class against all Defendants)

59. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 58.

60. California Labor Code § 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and 26th day of the month during which the labor was performed. California Labor Code § 204 further provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code § 204 further provides that all wages eared for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

61. During the statute of limitations period, Defendant, among other things, willfully failed to pay Plaintiff and Class members all wages earned and due to them, including but not limited to, meal and rest break premiums, and payment for work performed off-the-clock, within any time period permissible under Labor Code § 204.

62. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and Class members are entitled to all available statutory penalties, including but not limited to, civil penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and other applicable provisions under the California Labor Code and IWC Wage Orders, and an award of costs, expenses, and reasonable attorneys' fees.

///

///

///

///

SEVENTH CAUSE OF ACTION
Failure to Pay All Wages Due to Discharged and Quitting Employees
[Cal. Lab. Code §§ 201, 202, 203; All Applicable IWC
Wage Orders and Applicable Sections]
(On Behalf of Plaintiff and the Class against all Defendants)

63. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 62.

64. Pursuant to California Labor Code §§ 200, 201, 202, and 203, Defendant is required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

65. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay all accrued wages due to an employee no later than seventy-two (72) hours after the employee quits his or her employment, unless the employee provided seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

66. California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to thirty (30) workdays.

67. During the statute of limitations period, Defendant has willfully failed to pay accrued wages and other compensation to Plaintiff and Class members in accordance with California Labor Code §§ 201 and 202. Defendant does not have a sufficient policy to provide Plaintiff and Class members with their final paychecks within the timeframes required under California law. In addition, because Defendant has failed and continues to fail to properly compensate Plaintiff and Class members for all hours worked when due, overtime wages, and compensation for non-compliant meal and rest breaks, Defendant has also willfully failed and continues to fail to pay accrued wages and other compensation to Plaintiff and Class members in accordance with California Labor Code §§ 201 and 202.

1 68. As a result, Plaintiff and Class members are entitled to all available statutory
2 penalties, including the waiting time penalties provided in California Labor Code § 203, together
3 with interest thereon, as well as other available remedies.

4 69. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
5 Class members have been deprived of compensation in an amount according to proof at the time
6 of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such amounts,
7 plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code § 1194.

8 **EIGHTH CAUSE OF ACTION**

9 **Failure to Furnish Accurate Itemized Wage Statements**
10 **[Cal. Lab. Code §§ 226, 246, 248.1, 248.2 and 248.6; and All Applicable**
11 **IWC Wage Orders and Applicable Sections]**
12 **(On Behalf of Plaintiff and the Class against all Defendants)**

13 70. Plaintiff incorporates herein by specific reference, as though fully set forth, the
14 allegations in paragraphs 1 through 69.

15 71. During the statute of limitations period, Defendant routinely failed to provide
16 Plaintiff and Class members with timely, accurate, and itemized wage statements in writing
17 showing each employee's gross wages earned, total hours worked, all deductions made, net wages
18 earned, and all applicable hourly rates in effect during each pay period and the corresponding
19 number of hours worked at each hourly rate, in violation of California Labor Code § 226 and all
20 applicable IWC Wage Orders and applicable sections.

21 72. Defendant's pay stubs violate Labor Code § 226 on their face by, failing to list the
22 applicable rates of pay for regular and overtime hours worked by Plaintiff and aggrieved
23 employees. Further, Defendant was and is not providing Plaintiff and other Class members with
24 proper meal periods and rest breaks but intentionally fails to include in their wage statements one
25 (1) additional hour of compensation at their regular rates of pay for each non-compliant meal
26 period or rest break, fails to pay Plaintiff and other Class Members their regular rate of pay based
27 upon nondiscretionary bonuses, etc., and fails to pay all wages due based upon Defendant's illegal
28 and unlawful rounding policy which favored Defendant. In addition, Defendant required Plaintiff
and Class members to work off-the-clock without compensation and illegally rounded the time

1 that they worked, rendering the wage statements inaccurate, and other methods yet to be
2 discovered.

3 73. Defendant knowingly and intentionally failed to provide Plaintiff and Class
4 members with timely, accurate, and itemized wage statements in accordance with California Labor
5 Code § 226(a) so as to prevent Plaintiff and Class members from being able to determine whether
6 they were being paid for, among other things, all of the hours they worked and at the proper rates
7 of pay.

8 74. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
9 Class members have been damaged in an amount according to proof at trial, and seek all wages
10 earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all
11 available penalties, including but not limited to penalties pursuant to California Labor Code §§
12 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees,
13 including but not limited to those provided in California Labor Code § 226(e), as well as other
14 available remedies.

15 **NINETH CAUSE OF ACTION**
16 **Failure to Maintain Required Records**
17 **[Cal. Lab. Code §§ 226, 1174; and All Applicable IWC**
18 **Wage Orders and Applicable Sections]**
19 **(On Behalf of Plaintiff and the Class against all Defendants)**

20 75. Plaintiff incorporates herein by specific reference, as though fully set forth, the
21 allegations in paragraphs 1 through 74.

22 76. During the statute of limitations period, as part of Defendant's illegal payroll
23 policies and practices to deprive Plaintiff and Class members of all wages earned and due,
24 Defendant knowingly and intentionally failed to maintain records as required under California
25 Labor Code §§ 226, 1174, and all applicable IWC Wage Orders and applicable sections, including
26 but not limited to, the following records: total daily hours worked by each non-exempt employee;
27 applicable rates of pay; all deductions; meal periods; time records showing when each non-exempt
28 employee begins and ends each workday; and accurate itemized wage statements.

77. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and Class members have been damaged in an amount according to proof at trial, and are entitled to all wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all available statutory penalties, including but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as well as other available remedies.

TENTH CAUSE OF ACTION

Failure to Indemnify for Necessary Expenditures Incurred in Discharge of Duties
[Cal. Lab. Code § 2802; and All Applicable IWC
Wage Orders and Applicable Sections]
(On Behalf of Plaintiff and the Class against Defendants)

78. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 77.

79. California Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer.

80. During the Class period, Defendant knowingly and willfully failed to indemnify Plaintiff and Class members for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Defendant, including but not limited to, the costs and expenses related to gas mileage and insurance regarding the usage of their cars and personal cellular phone usage, and personal protective equipment (“PPE’s) during the COVID-19 pandemic, all in violation of California Labor Code § 2802.

81. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and Class members have been damaged in an amount according to proof at trial, and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor Code § 2802(b). Additionally, Plaintiff and Class members are entitled to all available statutory penalties and an award of costs, expenses, and reasonable attorneys' fees, including those provided in California Labor Code § 2802(c), as well as other available remedies.

ELEVENTH CAUSE OF ACTION
Unfair and Unlawful Business Practices
[Cal. Bus. & Prof. Code § 17200 *et. seq.*]
(On Behalf of Plaintiff and the Class against all Defendants)

82. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 81.

83. Each and every one of Defendant's acts and omissions in violation of the California Labor Code and/or the applicable IWC Wage Orders as alleged herein, including but not limited to, Defendant's failure to provide required meal and rest breaks, failure to pay proper overtime compensation, unlawful rounding and requiring off-the-clock work, failure to pay all wages due to discharged or quitting employees or to pay timely wages, failure to furnish accurate itemized wage statements, and failure to maintain required records, all constitute an unfair and unlawful business practice under California Business and Professions Code § 17200 *et seq.*

84. Defendant's violations of California wage and hour laws constitute unfair business practices because the aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systematic manner, to the detriment of Plaintiff and Class members.

85. Among other practices, Defendant has avoided payment of wages, overtime wages, the provision of meal and rest breaks, and other benefits as required by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage Orders. Further, Defendant has failed to record, report, and pay the correct sums of assessment to the state authorities under the California Labor Code and other applicable regulations. In addition, Defendant failed to comply with the notice requirements of the Wage Theft Prevention Act including Labor Code Section 2810.5 further resulting in unlawful business practices.

86. As a result of these unfair and unlawful business practices, Defendant and its affiliated business have reaped unfair and illegal profits during the Class period at the expense of Plaintiff and Class members, and members of the public. Defendant should be made to disgorge its ill-gotten gains and to restore them to Plaintiff and Class members.

87. Defendant's unfair and unlawful business practices entitle Plaintiff and Class members to seek preliminary and permanent injunctive relief, including but not limited to orders

1 that Defendant account for, disgorge, and restore to Plaintiff and Class members the wages and
2 other compensation unlawfully withheld from them. Plaintiff and Class members are entitled to
3 restitution of all monies to be disgorged from Defendant in an amount according to proof at the
4 time of trial.

5 **TWELFTH CAUSE OF ACTION**
6 **Representative Action for Civil Penalties**
7 **[Cal. Lab. Code §§ 2698- 2699.5]**
8 **(On Behalf of Plaintiff and all Other Aggrieved Employees against all Defendants)**

8 88. Plaintiff incorporates herein by specific reference as though fully set forth the
9 allegations in paragraphs 1 through 87, with exception of the allegations in Paragraphs 18 through
10 20 (A)-(D).

11 89. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code
12 § 2699(c), and is a proper representative to bring a civil action on behalf of herself, and other non-
13 exempt employees of Defendant who are California citizens, pursuant to the procedures specified
14 in California Labor Code § 2699.3, because Plaintiff was employed by Defendant and the alleged
15 violations of the California Labor Code were committed against Plaintiff.

16 90. A plaintiff has standing to represent all aggrieved employees for all of their asserted
17 violations of the California Labor Code under PAGA.

18 91. Plaintiff seeks to recover civil penalties through a representative action permitted by
19 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus,
20 class certification is not required.

21 92. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor
22 Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to penalties
23 under California Labor Code §§ 2699 and all applicable IWC wage order penalties, from Defendant
24 in a representative action for the violations set forth above, including but not limited to, violations
25 of California Labor Code § 2802. Plaintiff is also entitled to an award of reasonable attorneys’ fees
26 and costs pursuant to California Labor Code § 2699(g)(1).

27 93. Furthermore, California Labor Code Section 432 provides that an employee must be
28 provided with copies of any signed instrument relating to obtaining or holding employment.

1 Defendant failed to provide Plaintiff and Class Members all copies of signed documents relating to
2 obtaining and holding employment.

3 94. Additionally, IWC Wage Order No. 7-2001, § 14 provides that “(A) All working
4 employees shall be provided with suitable seats when the nature of the work reasonably permits the
5 use of seats.” Defendant failed to provide Plaintiff and Class Members with suitable seating when
6 the use of such seating would not interfere with the performance of their duties or for when Plaintiff
7 and Class Members were not engaged in the active duties of their employment that required
8 standing.

9 95. Pursuant to California Labor Code §§ 2699.3, on June 20, 2024, Plaintiff provided
10 written notice by certified mail to the California Labor and Workforce Development Agency
11 (“LWDA”) and Defendant of the specific provisions of the California Labor Code and IWC Wage
12 Orders alleged to have been violated, including the facts and theories to support the alleged
13 violations. Within sixty-five (65) calendar of the postmark date of Plaintiff’s notice letter, the
14 LWDA did not provide notice to Plaintiff that it intends to investigate the alleged violations.
15 Therefore, Plaintiff has complied with all of the requirements set forth in California Labor Code §
16 2699.3 to commence a representative action under PAGA.

17 96. California Labor Code § 2699(f) provides that for all California Labor Code
18 violations for which a civil penalty is not specifically provided, the following civil penalties are
19 established: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
20 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
21 subsequent violation.

22 97. Plaintiff seeks to recover such civil penalties under California Labor Code §
23 2699(f) for Defendant’s violations of California Labor Code provisions for which a civil penalty is
24 not specifically provided, including but not limited to, California Labor Code §§ 432.5, 435, and
25 2802, and for the violations of the applicable IWC Wage Order alleged above.

26 98. All civil penalties sought and recovered under this action will be allocated as
27 follows: seventy-five (65) percent to the State of California and twenty-five (35) percent to
28 Plaintiffs and aggrieved employees.

1 99. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to
2 California Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff, individually and on behalf of all other persons similarly
5 situated, respectfully prays for relief against Defendant and DOES 1 through 50, inclusive, and
6 each of them, as follows:

- 7 1. For compensatory damages in an amount to be ascertained at trial;
- 8 2. For restitution of all monies due to Plaintiff and Class members, as well as
9 disgorged profits from the unfair and unlawful business practices of Defendant;
- 10 3. For meal and rest break compensation pursuant to California Labor Code § 226.7
11 and IWC Wage Order No. 7-2001 and all applicable IWC Wage Orders and pertinent sections;
- 12 4. For preliminary and permanent injunctive relief enjoining Defendant from violating
13 the relevant provisions of the California Labor Code and the IWC Wager Orders, and from
14 engaging in the unlawful business practices complained of herein;
- 15 5. For waiting time penalties pursuant to California Labor Code § 203;
- 16 6. For statutory penalties according to proof, including but not limited to all penalties
17 authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 558, 1174.5, 1775, 1197.1,
18 2699.3;
- 19 7. An award of actual, statutory, and/or punitive damages to Plaintiff and the Class
20 pursuant to California Civil Code §§ 1785.31 and 1786.50, in an amount subject to proof at trial;
- 21 8. For interest on the unpaid wages at 10 percent per annum pursuant to California
22 Labor Code §§ 218.6, 2802 and California Civil Code §§ 3287, 3288, and/or any other applicable
23 provision providing for pre-judgment interest;
- 24 9. For reasonable attorneys' fees and costs pursuant to California Labor Code §§
25 218.5, 226, 2802, 2699.3, et seq. and California Code of Civil Procedure § 1021.5, California
26 Civil Code § 1786.50(a)(2), California Civil Code § 1785.31(a), and/or any other applicable
27 provisions providing for attorneys' fees and costs;
- 28 10. For declaratory relief;

1 11. For an order requiring and certifying the First through Tenth Causes of Action as a
2 class action;

3 12. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as
4 Class counsel; and

5 13. For such further relief that the Court may deem just and proper.

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff on behalf of herself and all others similarly situated, hereby demands a jury trial
8 with respect to all issues triable of right by jury.

9 DATED: October 17, 2024

THE WHEELER LAW FIRM, APC

10
11 By: _____


SCOTT ERNEST WHEELER
JUSTIN A. WHEELER

12
13 *Attorney for Plaintiff and all others similarly*
14 *Situated*