

June 24, 2024

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128>

Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

VIA CERTIFIED MAIL TO:

(by certified mail to The CBM Group, Inc. and John Patrick Casper)

The CBM Group, Inc.
1010 Racquet Club Dr., Suite 108
Auburn, CA 95603
Certified Mail Tracking Number: 9414 8112 0620 4712 5155 55

John Patrick Casper
Agent for Service of Process for The CBM Group, Inc.
1010 Racquet Club Dr., Suite 108
Auburn, CA 95603
Certified Mail Tracking Number: 9414 8112 0620 4712 5446 61

**Re: Labor Code § 2698, *et seq.* Private Attorneys' General Act Claim
PAGA Notice Letter to LWDA
Alicia D. Cole v. The CBM Group, Inc.
Superior Court for the County of Placer**

Dear Gentilepersons:

This office represents Plaintiff Alicia D. Cole ("Plaintiff") and other similarly aggrieved employees employed as non-exempt, hourly employees including property managers, maintenance personnel, repair persons, leasing agents, and Employees employed in similar and related positions at or based out of Defendants' locations and facilities in California during the relevant period (collectively "Aggrieved Employees") for, *inter alia*, violations of California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 227.3, 246, 248.1, 248.2, 248.5, 351, 354, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, 2810.5, 2698, and 2699, *et seq.*; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* ("the Act"). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of herself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants The CBM Group, Inc., a business organization of the form of a corporation, and Does 1 through 50 inclusive (all defendants being referred to herein collectively as "Defendants").



Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along with Plaintiff's Class Action Complaint, which is attached to this Notice letter. The Complaint has been filed concurrently in Placer County Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiff and all of their Aggrieved Employees in California. The attached Class Action Complaint provides the details of Plaintiff's class-wide claims and representative claims under the Act, and the applicable California law governing them. It, along with this Notice Letter, addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

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

Plaintiff was assigned to work by Defendants during the relevant time period based out of Defendant's facilities in Placer County. Plaintiff worked as a property manager along with other non-exempt hourly employees in similar and related positions at Defendant's California facilities, including in Placer County. Defendants provide property ownership and management to customers throughout California.

Plaintiff and the other similarly situated Employees of Defendants worked based out of Defendants' facilities and offices in California at Defendants' behest without being paid all wages due and without being provided all their required meal periods and rest breaks. Upon information and belief, Plaintiff was employed by Defendants and shared similar job duties and responsibilities, was subjected to the same policies and practices, and endured similar violations at the hands of Defendants as the other Employee Aggrieved Employees who served in similar and related positions. Defendants required Plaintiff and the Employees in the Class to work off the clock and failed to record accurate time worked by these Employees, failed to pay them at the appropriate rates for all hours worked, failed to pay all wages due and owing at termination or resignation, and provided Plaintiff and the Aggrieved Employees with inaccurate wage statements that prevented them from learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain under Defendants' control and were not provided with the opportunity to take



full uninterrupted and duty-free rest periods and meal breaks, as required by the Labor Code and the applicable paragraphs of the IWC Wage Orders.

Defendant THE CBM GROUP, INC. (“CBM”) is a California corporation which is headquartered and maintains its principal executive offices in Auburn, California. CBM is the presumptive employer of Plaintiff as it was listed as her employer on the wage statements issued to her by Defendants. CBM’s LinkedIn shows that CBM are “[p]roviders of Affordable Housing across the United States.”

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

Defendants provide property management and affordable housing services to customers throughout California. Plaintiff worked as a property manager for Defendants during the relevant time period. The property managers are responsible for collecting rent, overseeing maintenance, and communicating directly with tenants.

Plaintiff and the Aggrieved Employees were generally scheduled to work at least five days per week and worked shifts of 8-9 hours or longer. Plaintiff and the Aggrieved Employees often performed off the clock work or otherwise worked hours for which they were not compensated at the beginning and ending of their shifts.

Plaintiff and Aggrieved Employees were subjected to pre and post-shift work due to the Defendant’s workload and demands placed upon them. It was impossible for Plaintiff and Aggrieved Employees to complete all job duties during an eight hour work day and they therefore incurred overtime hours which were not properly paid.

Defendants utilized timekeeping systems and procedures which resulted in inaccurate or incomplete records of clock in and out times for work shifts and meal periods, including by rounding hours down to the detriment of the Aggrieved Employees. This resulted in widespread off the clock work where Aggrieved Employees were not compensated at their required rates for all hours worked, including time when they remained under Defendants’ control.

Defendants systematically and uniformly failed to compensate Plaintiff and the Aggrieved Employees wages as required for all their hours worked and unlawfully deducted wages they earned. Plaintiff and the Aggrieved Employees had their wages unlawfully deducted when Defendants’ managers recorded fewer hours worked in the timekeeping records than were in fact worked.



This led to systematic off the clock work where Employees were working or otherwise under Defendants' control before shift start times, and after shift end times, but they were not compensated by Defendant for all their time, including due to unlawful rounding. This unpaid off the clock work, including that incurred before shift start times, also impacted when employees should have been paid at the applicable hourly overtime rate, as they began incurring overtime later than they should have during a work shift. This led to systematic underpayment of both regular and overtime wages.

Defendants' wage statements also list that Plaintiff was paid a "Bonus," but to whatever extent Defendants also paid overtime during the periods when Defendants paid this Bonus, Defendants unlawfully failed to include this additional remuneration beyond the hourly rates in the regular rate used to calculate and pay any paid time off or overtime rates Defendants paid.

Given the above described off the clock work, failure to include all bonus compensation in Plaintiff's paid time off rate, overtime rate, and unlawful rounding and deductions from hours worked perpetrated by Defendants' management, Plaintiff would often be paid for substantially fewer hours than she actually worked, and that she was not paid at the correct overtime rate for all hours she worked after eight hours into a shift or over forty in a work week. Upon information and belief, the same occurred in connection with the other Aggrieved Employees.

Defendants also relied heavily on sending text messages to and calling Plaintiff and the Aggrieved Employees on their personal mobile phones regarding daily scheduling issues and regarding other work related matters, and did so without regard to whether they were off duty or otherwise on a break. Moreover, since Plaintiff sometimes worked from home, she was required to use her home internet to complete her job duties. This resulted in further off the clock work where Plaintiff and the Aggrieved Employees were under Defendant's control and performing work duties without compensation. This time was not compensated as hours worked by Defendants, and Defendants failed to reimburse Plaintiff and the Aggrieved Employees for the substantial use of their personal phones and internet data plans for work-related purposes.

Plaintiff was therefore not paid for all her hours worked at the required minimum, overtime and double time wage rates due to Defendants' policy of unlawful rounding and practice of requiring her to work off the clock and without pay, and failed to pay at the required overtime rates for all hours over eight in a shift, or over forty in a week. With work shifts generally being scheduled for eight hours or more, this unpaid off the clock work resulted in Plaintiff and the Aggrieved Employees working past eight hours on a shift, which required that they be paid at the correct overtime rate of 1.5 times their regular rate. Defendants' management would shave hours worked off of Plaintiff's daily and weekly totals, or otherwise round them down or fail to record them. To the extent Defendants paid Aggrieved Employees any shift differentials or other forms of remuneration, Defendants failed to include them in the regular rate used to calculate and pay overtime hours.

Defendants thus systematically underpaid Plaintiff and the Aggrieved Employees by failing to pay them at the required overtime rates for all hours over eight in a work shift or over forty in a



work week, and all hours over twelve in a day at the required double time rate. Upon information and belief, the Aggrieved Employees were bound by similar scheduling and work policies which Defendants required them to follow, and endured similar violations at Defendants' hands.

Defendants have either failed to maintain timekeeping records for Plaintiff that would permit Plaintiff to discover the nature and extent of the off the clock work Defendants' required and the actual hours Plaintiff worked, or have otherwise declined to produce them to Plaintiff in response to a timely and lawful request. By failing to pay for all hours worked, and by deducting time for meal periods that were not lawfully provided, Defendants have committed knowing and intentional ongoing violations of the record keeping requirements under the Labor Code, including section 1174.

The failure to pay for all hours worked and underpayment of wages to Plaintiff and the Aggrieved Employees is and has been a direct consequence of Defendants' unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at Defendants' locations throughout California. As a result of the above described unlawful requirements to work off the clock, the failure to accurately record all hours worked and pay wages at the correct rates, and the other wage violations they endured at Defendants' hands, Plaintiff and the Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when working more than eight hours in any given day and/or more than forty hours in any given week. As a result of Defendants' unlawful policies and practices, Plaintiff and Aggrieved Employees incurred overtime hours worked for which they were not adequately and completely compensated, in addition to the hours they were required to work off the clock at their regular rates.

Defendants also failed to provide Plaintiff and the Aggrieved Employees with their required first and second meal periods, and their first, second, and third required rest breaks. The above described off the clock work contributed to Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Aggrieved Employees, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically failed to authorize and permit Plaintiff and the Aggrieved Employees to take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

Due to the work scheduling and job demands Defendants placed upon Plaintiff and the Aggrieved Employees, and the systematic understaffing Employees had to contend with, Plaintiff and the Aggrieved Employees were pressured to work through breaks and therefore endured similar ongoing meal period and rest break violations at Defendants' hands.

Plaintiff and the Aggrieved Employees generally worked shifts that entitled them to receive at least one meal period and two to three rest breaks. However, Defendants failed to provide all required meal periods and rest breaks to Plaintiff and the Aggrieved Employees. Defendants followed a uniformly applied policies across all facilities of not providing all required meal periods and rest breaks to their Employees in accordance with the Labor Code and IWC Wage



Orders. Meal periods were often not provided during a work shift, as work and production demands and management pressure required Employees to work through breaks. When breaks were provided, they were frequently provided well after five hours into a work shift, and often for less than 30 minutes. Plaintiff was also required to endure shifts of ten hours or more without receiving a second meal period or all her required rest breaks.

Defendants also followed a policy of denying all required timely and duty-free meal periods for 30 minutes in duration by automatically deducting for meal periods which were presumed to have been properly provided while also systematically shortening breaks by requiring Employees to remain under Defendants' control. Defendants thus failed to provide all the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Defendants did not have a policy or practice which provided or recorded all the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to the Plaintiff and the other Aggrieved Employees. Plaintiff and other Aggrieved Employees were required to perform work as ordered by Defendants or otherwise remain under Defendants' control for more than five hours during a shift, or ten hours in a shift, but were often required to do so without receiving a lawful, timely, and duty-free 30-minute meal break for every five hours worked. Additionally, as addressed above, Defendants followed a practice of requiring off the clock work, in a manner that would impact when Employees were to receive meal periods and rest breaks, thus leading to further violations.

As a result, Defendants' failure to provide Plaintiff and the Aggrieved Employees 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 have either failed to maintain required records of when meal periods were actually provided or failed to produce them in response to Plaintiff's timely and lawful requests, or else maintained inaccurate and incomplete records. Defendants also failed to pay Employees "premium pay," i.e. one hour of wages at each Employee's effective hourly rate of pay, for each meal period or rest break that Defendants failed to provide or deficiently provided.

Therefore, for at least four years prior to the filing of this action and through to the present, Plaintiff and the Aggrieved Employees were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required meal breaks due to Defendants' policies and practices. On the occasions when Plaintiff and the Aggrieved Employees were provided with a meal period, it was often provided after five hours into a work shift and was therefore untimely or was interrupted, or was impermissibly shortened, and Employees were not provided with one hour's wages in lieu thereof. To the extent Defendants assert they paid any meal period premiums, they failed to do so for all violations.

Plaintiff and the Aggrieved Employees were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates, including for meal period and rest break premium payments. Plaintiff also contends that Defendants failed to pay Plaintiff and the Aggrieved Employees all wages due and owing, including by miscalculating



wages owed and by requiring off the clock work, failing to provide meal and rest breaks, and failing to furnish accurate wage statements and timely pay all wages owed, all in violation of various provisions of the California Labor Code and applicable IWC Wage Orders.

During the course of Plaintiff's and the Aggrieved Employees' employment with Defendants, they were not paid all wages they were owed, including for all work performed (resulting in "off the clock" work) and for all their overtime hours worked, or were not paid at the correct rates. This has resulted in systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-exempt, hourly employees providing services related to surgery coordinators, certified nursing assistants, registered nurses, and Employees in similar and related positions based out of Defendants' facilities in California.

Plaintiff was required to and did supply her own mobile telephone and personal internet service for performing her duties for the Defendants. Additionally, Plaintiff and the Aggrieved Employees were required to wear uniforms and were required to clean and maintain the uniforms without reimbursement from the Defendants.

Plaintiff and Aggrieved Employees were sometimes asked to work shifts over eight hours in a day and to work over forty hours in a work week, but they were not paid at the appropriate overtime rate for all such hours, including by being required to perform work duties and tasks without pay and while off-the-clock. In these instances, Plaintiff and the Aggrieved Employees began incurring overtime hours before Defendants recognized and began paying any overtime hours worked by virtue of the systematic off the clock work. Defendants also miscalculated and underpaid overtime by failing to account for bonuses and other forms of remuneration in the regular rate used to calculate overtime payments. As a result, Plaintiff and the Aggrieved Employees were not paid at the correctly calculated overtime rate for all their overtime hours worked or otherwise worked overtime hours during their employment with Defendants for which they were not compensated, in violation of the California Labor Code.

When the Aggrieved Employees did work overtime, they were not compensated at the required and correct rate because Defendants failed to incorporate bonuses and other additional forms of remuneration they received into the regular rate of pay used to calculate and pay overtime. More specifically, during each pay period, the Aggrieved Employees paid bonuses that were non-discretionary and were tied directly to their performance. However, contrary to the requirements of the Labor Code and IWC Wage Orders under California law, Defendants did not incorporate these bonuses and other forms of remuneration they paid Employees into the regular rate of pay Defendants used to calculate and pay overtime to Plaintiff and the aggrieved employees.

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



shifts generally scheduled for eight hours or more, this unpaid off the clock work resulted in Plaintiff and the Aggrieved Employees working past eight hours on a shift, which required that they be paid at the correct overtime rate of 1.5 times their regular rate. Therefore, the Plaintiff and Aggrieved Employees were required to work without remuneration. Defendants thus systematically underpaid Plaintiff and the Aggrieved Employees by failing to pay them at the required overtime rates for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a day at the required double time rate. Upon information and belief, the Aggrieved Employees were bound by similar scheduling and work policies which Defendants required them to follow and endured similar violations at Defendants' hands as Plaintiff.

Defendants did this, upon information and belief, in connection with other Employees in a concerted effort to underpay wages to Plaintiff and the other Aggrieved Employees. Employees were therefore not paid for all their hours worked at the required minimum, overtime, and double time wage rates due to Defendants' policy and practice of requiring work off the clock and without pay or failing to pay for all hours worked at the correct rates of pay. With work shifts generally scheduled for eight hours or more, this unpaid off the clock work resulted in Plaintiff and the Aggrieved Employees working past eight hours on a shift, which required that they be paid at the correct overtime rate of 1.5 times their regular rate. Therefore, the Plaintiff and Aggrieved Employees were required to work without remuneration. Defendants thus systematically underpaid Plaintiff and the Aggrieved Employees by failing to pay them at the required overtime rates for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a day at the required double time rate. Upon information and belief, the Aggrieved Employees were bound by similar scheduling and work policies which Defendants required them to follow and endured similar violations at Defendants' hands as Plaintiff.

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

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

The failure to pay for all hours worked and underpayment of wages to Plaintiff and the Aggrieved Employees is and has been a direct consequence of Defendants' unlawful



compensation policies and practices, which upon information and belief applied uniformly to the Aggrieved Employees working at Defendants' locations and facilities. As a result of the above-described unlawful requirements to work off the clock, the failure to accurately record all hours worked and pay wages at the correct rates, the failure to compensate employees for time under Defendants' control and the other wage violations they endured at Defendants' hands, Plaintiff and the Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when working more than eight hours in any given day and/or more than forty hours in any given week.

Therefore, from at least four years prior to the filing of this lawsuit and continuing to the present, Defendants had a consistent policy or practice of failing to pay Employees for all hours worked and failing to pay minimum wages for all time worked, as required by California law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present, Defendants had a consistent policy or practice of failing to pay Employees overtime compensation at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of Labor Code § 510 and the corresponding sections of IWC Wage Orders. To the extent Defendants paid Plaintiff and the Aggrieved Employees bonuses and shift differentials and other forms of remuneration above and beyond their hourly pay, upon information and belief Defendants miscalculated and therefore underpaid any overtime they paid during these pay periods by failing to include all forms of remuneration in the regular rate used to calculate and pay overtime.

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

More specifically, Plaintiff worked shifts that entitled her to at least one meal period, but Defendants' managers required Plaintiff and the Aggrieved Employees to prioritize work over taking lawful meal periods. To whatever extent there was ever a schedule for meal periods, it went by the wayside quickly as there always seemed to be a customer that needed assistance. Constant short-staffing led to systematically late meal periods, and on-duty meal periods that were incessantly interrupted by customer and management demands and required job duties and tasks. The heavy workload and management expectations also contributed to Employees working through meal periods or not taking them or taking them late so work could be accomplished or they were otherwise required to remain under Defendants' control during meal periods.



Therefore, meal period violations systematically occurred throughout all of Plaintiff's work shifts where Defendants failed to provide both a lawful meal period and meal premium payment. To the extent Defendants ever did pay Plaintiff a meal period premium, they failed to include all forms of remuneration beyond hourly wages in the regular hourly rate used to pay the one-hour premium payment. Upon information and belief, the other Aggrieved Employees were subjected to similar unlawful policies and practices and endured similar violations as Plaintiff.

Defendants thus failed to provide all the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Plaintiff and other Aggrieved Employees were required to perform work as ordered by Defendants or otherwise remain under Defendants' control for more than five hours during a shift, or ten hours in a shift, but were often required to do so without receiving a lawful, timely, and duty-free 30-minute meal breaks. Additionally, as addressed above, Defendants followed a practice of requiring off the clock work, in a manner that would impact when Employees were to receive meal periods and rest breaks, thus leading to further violations.

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

As a result, Defendants' failure to provide Plaintiff and the Aggrieved Employees 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. Therefore, for at least four years prior to the filing of this action and through to the present, Plaintiff and the Aggrieved Employees were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks as required under the Labor Code and Wage Orders due to Defendants' policies and practices. On the occasions when Plaintiff and the Aggrieved Employees were provided with a meal period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were not provided with one hour's wages in lieu thereof.

Similar violations resulted from Defendants' failure to authorize and permit Plaintiff and the Aggrieved Employees to take duty-free, net ten-minute rest breaks for every four hours of shift work, or major fraction thereof. Plaintiff and the other similarly situated Aggrieved Employees were either not authorized permitted the opportunity to take a rest break, or were required to remain under Defendants' control and respond to instructions from management and job demands if and when they even attempted to take one. Upon information and belief, Defendants thus also failed to authorize and permit employees to leave the premises during rest breaks,



evidencing Defendants' policy and practice of requiring Plaintiff and the Aggrieved Employees to remain under their control during required off-duty rest break times.

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

During rest periods, employers must relieve employees of all duties and relinquish control over how employees spend their time. Plaintiff and the Aggrieved Employees were and are under Defendants' control when they are working through rest breaks. Defendants have also provided either impermissibly shortened or untimely meal and rest breaks to Plaintiff and the Aggrieved Employees. Plaintiff and the Employees in the Aggrieved Employees were thus 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 hour's wages in lieu thereof. Plaintiff and the Aggrieved Employees were also required to remain on-duty during breaks or portions of their breaks, thus making them either untimely or shortened and on-duty, and they were also prevented from leaving the premises and otherwise remain under Defendants' control during rest breaks under Defendants' uniformly applied policies and practices.

Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or deducting the Employees' earned wages by requiring off the clock work during breaks and before and after work shifts and by miscalculating the regular rate and accordingly underpaying overtime wages and meal and rest break premiums. By not compensating Employees for all hours worked and at the correct rates, Defendants unlawfully deducted wages earned by and owed to Plaintiff and the Aggrieved Employees, in violation of Labor Code § 221.

Defendants also violated California Labor Code § 246 by not providing all required paid sick days to Plaintiff and the similarly aggrieved Employees. Labor Code § 246 provides that an Employee who "works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Paid sick time for nonexempt employees shall be calculated in the same manner as the regular pay rate for the workweek in which the employee uses the paid sick time. Defendants failed to provide Plaintiff and the other similarly Aggrieved Employees with all their required



and earned sick days paid at the correct rate of pay, in violation of Labor Code § 246. Additionally and upon information and belief, Defendants have failed to provide COVID-19 supplemental sick leave to the Aggrieved Employees during the relevant time period, including by failing to provide two work weeks of COVID-19 supplemental paid sick leave paid at the correct rates as required under Labor Code §§ 248.1 and 248.2 and including damages and penalties as these sections are enforced through Labor Code § 248.5, which requires that: “If paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty.” Plaintiff accordingly seek this relief available for Defendants’ failure to provide Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

Upon information and belief, Defendants also failed to provide Employees such as Plaintiff at the time of her employment and thereafter with written notice complying with all the requirements of Labor Code § 2810.5, which provides that: “At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing” specifically required information. Upon information and belief, Defendants failed to provide this information to the Aggrieved Employees as required under Labor Code § 2810.5. Defendants were required to provide Plaintiff and the Aggrieved Employees certain specific information upon hiring pursuant to California Labor Code § 2810.5. Defendants failed to provide Plaintiff with any such information when she was hired, or have failed to produce it, and upon information and belief, Defendants committed similar violations in connection with similarly situated Aggrieved Employees.

Defendants have also consistently failed to provide Aggrieved Employees with timely, accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws, including by understating bonuses, the requirement of off the clock work, the failure to pay all overtime and double time wages owed and failure to pay them at the appropriate premium rates, and the failure to pay premium wages for unprovided or otherwise unlawful meal and rest breaks, or by miscalculating any overtime or meal period or rest break premium wages and by the systematic and unlawful deductions Defendants took from Employee wages. Defendants have also made it difficult to account with precision for the unlawfully withheld wages and meal and rest period compensation owed to Plaintiff and the Aggrieved Employees, during the liability period, including because they did not calculate the regular rate of pay correctly when paying overtime or meal period premiums and because they did not implement and preserve a record-keeping method as required for non-exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage Orders. Upon information and belief, time clock punches were not maintained or were not accurately maintained for work shifts and meal periods. Defendants also failed to accurately record and pay for all regular and



overtime hours worked and submitted by Plaintiff and the Aggrieved Employees, including by failing to pay all overtime hours at the correctly calculated overtime premium rate.

Defendants thus provided Plaintiff and the Aggrieved Employees with wage statements that failed to report all hours worked accurately, applicable hourly rates for all hours worked and bonuses. For the same reasons as explained above, Plaintiff and the Aggrieved Employees were provided with unlawful wage statements that failed to reflect all bonuses earned and all hours worked and failed to pay for all overtime hours or failed to pay overtime wages at the correct overtime premium rate, and Defendants miscalculated meal and rest break premiums, and sick time if and when they did pay them. Defendants followed this unlawful policy and practice even though both Plaintiff and Defendants were aware that Plaintiff and the Aggrieved Employees worked more total hours or earned more bonuses than were reflected on the wage statements, including overtime hours, and were underpaid by regular rate miscalculation. Plaintiff and the Aggrieved Employees were unable to discern from their wage statements alone the actual hours they worked in total during a pay period and the rates they were paid for those hours worked. Defendants have thus also failed to comply with Labor Code § 226(a) by inaccurately reporting total hours worked and total wages earned by Plaintiff and the Aggrieved Employees, along with the appropriate applicable rates, among other requirements.

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

Additionally, Defendants have regularly required Plaintiff and the Aggrieved Employees to incur necessary business expenses in the course of performing their required job duties without reimbursement. This includes requiring Plaintiff and the Aggrieved Employees to use their cellular phones to conduct work related business and to receive and respond to text messages from management. Plaintiff was required to use her cell phone frequently as a primary means of communication with Defendant regarding work scheduling. Defendants would contact Plaintiff without regard to whether she was off duty after scheduled work hours, and without regard to whether she was taking a break. Moreover, since Plaintiff was required to work from home, she utilized her personal internet service to complete her job duties. Plaintiff and the Aggrieved Employees must be reimbursed for these necessary business expenses under Labor Code § 2802, and Defendants systematically failed to do so.

///



PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above and in further detail in the attached Class Action Complaint, Plaintiff and the Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

Defendants failed to pay Employees the minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with off the clock work, including all the time required to remain on duty and under Defendants’ control during breaks and due to the work demands placed upon them by Defendants’ management and due to unlawful rounding. Defendants, and each of them, have also intentionally and improperly rounded, changed, adjusted and/or modified Employee hours, or required Employees to do so, and imposed difficult to attain job and shift scheduling requirements on Plaintiff and the Aggrieved Employees, which resulted in off the clock work and underpayment of all wages owed to Employees over a period of time, while benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum wages to Aggrieved Employees, including by requiring systematic off the clock work. Defendants’ uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Aggrieved Employees as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other Aggrieved Employees as to minimum wage pay.

In light of the foregoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants’ failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants’ conduct as alleged herein was willful,



intentional, and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Specifically, Defendants had a consistent policy of not paying Employees wages for all hours worked, including hours at their required regular, overtime, and double-time rates. Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted and/or modified certain employees' hours, including Plaintiff's, or required Aggrieved Employees to do so, or otherwise caused them to work off the clock to avoid paying Aggrieved Employees all earned and owed straight time and overtime wages and other benefits, in violation of the California Labor Code, the California Code of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor Standards and Enforcement.

Defendants have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties or remain under Defendant's control. When considered in combination with the unlawful rounding to their detriment, Aggrieved Employees were not properly compensated, nor were they paid overtime rates or the correct overtime rate (addressed above) for hours worked in excess of eight hours in a given day, and/or forty hours in a given week. Based on information and belief, Defendants did not make available to Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have also violated these provisions by requiring Plaintiff and other Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

In light of the foregoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199,



2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code § 226.7 and Penalties

Defendants have regularly required Aggrieved Employees to work shifts in excess of five hours without providing them with uninterrupted meal periods of not less than thirty minutes as required under Labor Code §§ 226.7, 512, and paragraph 11 of the applicable Wage Orders. Specifically, Aggrieved Employees were forced to incur shortened meal periods due to the work demands placed upon them by Defendants' management, were provided with breaks late and well after the fifth hour of work, could not be relieved to take breaks, or were required to remain on-duty at all times and were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks due to Defendants' policies and practices.

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendant's control, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e., one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided, including by miscalculating any premium payments they did make. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Rest-Break Liability and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants generally failed to authorize and permit any rest breaks, or provided rest periods untimely or for shortened durations, and Defendants' policies and procedures required Aggrieved Employees to remain under Defendants' control during breaks to respond job requirements or simply failed to authorize and permit them at all. Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each rest break



not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Aggrieved Employees inaccurately list the name and address of the legal entity that is the employer and failed to accurately account for unpaid wages, overtime, hours worked, bonuses earned and premium pay for deficiently provided meal periods and rest breaks, and unlawfully received or collected wages, as discussed above, and failed to list accurate rates of pay due to miscalculations of overtime and premium pay. In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§



226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders. Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods and by rounding. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday, or miscalculated these premiums by not including all forms of remuneration in the regular rate, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204.

In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees, and costs pursuant to Labor Code §§ 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by unlawful rounding and off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).



Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the foregoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages 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.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802

Defendants required Plaintiff and the Aggrieved Employees to pay for necessary work-related expenses they incurred. Defendants required Plaintiff and the Aggrieved Employees to use their cellular phones to conduct work related business and to receive scheduling and location assignments. Defendants also used the personal cellular phones and personal internet services for



the Aggrieved Employees as the primary means for contacting them both during and after work shifts regarding work scheduling or other company specific business, and Plaintiff and other similarly situated employees were required to respond. Plaintiff was also required to use her personal internet service to complete her work while working from home and was never reimbursed. Plaintiff and the Aggrieved Employees must be reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do so.

Defendants thus uniformly failed to reimburse those lawful and necessary work-related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees.

Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unfair Competition Under Business and Professions Code § 17200, et seq.

Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 et seq.

Plaintiff's PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the attached Class Action Complaint, Plaintiff will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 227.3, 246, 248.1, 248.2, 248.5, 351, 354, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, 2810.5, 2698, and 2699, et seq.; including as follows:

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2,



1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

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

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

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

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

(f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For Defendants' failure to provide Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and



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

(g) All Other Alleged Violations of the Labor Code and IWC Wage Orders: For Labor Code §§ 227.3, 2810.5, and any above addressed violation of the applicable provisions of the Labor Code and IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against The CBM Group, Inc. and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

We therefore request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,
D.LAW, INC.

Alvin B. Lindsay

a.lindsay@d.law

Jean Hopkins Power

j.power@d.law

Cc: The CBM Group, Inc. and John Patrick Casper by Certified Mail

D.LAW, INC.
Emil Davtyan, (SBN 299363)
emil@d.law
David Yeremian, (SBN 226337)
d.yeremian@d.law
Alvin B. Lindsay, (SBN 220236)
a.lindsay@d.law
Jean Hopkins Power, (SBN 326509)
j.power@d.law
880 E. Broadway
Glendale, California 91205
Telephone: (818) 962-6465
Facsimile: (818) 962-6469

Attorneys for Plaintiff Alicia D. Cole, on
behalf of herself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF PLACER**

ALICIA D. COLE, an individual, on behalf
of herself and others similarly situated,

Plaintiff,

vs.

THE CBM GROUP, INC, a California
corporation and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

CLASS ACTION

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages and for all Hours Worked;
2. Failure to Pay Wages and Overtime under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a)
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
10. Failure to Reimburse Necessary Business; and
11. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff ALICIA D. COLE (hereinafter “Plaintiff”), on behalf of herself and all other
2 similarly situated non-exempt, hourly non-exempt employees employed at Defendants’ facilities
3 and locations in California (collectively, “Employees”; individually, “Employee”) complains of
4 Defendants, and each of them, as follows:

5 INTRODUCTION

6 1. Plaintiff bring this action on behalf of herself and all other similarly situated current
7 and former Employees within the State of California who, at any time from four years prior to the
8 filing of this lawsuit, are or were employed as non-exempt hourly employees, including property
9 managers, maintenance, repair positions, leasing agents, and employees in similar and related
10 positions based out facilities operated in California by Defendants THE CBM GROUP, INC., a
11 California corporation and DOES 1 through 50, inclusive (all defendants being collectively
12 referred to as “Defendants”). Plaintiff alleges that Defendants, and each of them, violated various
13 provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission
14 (“IWC”), and the California Business & Professions Code, and seeks redress for these violations.

15 2. Plaintiff was assigned to work by Defendants during the relevant time period based
16 out of Defendant’s facilities in Placer County. Plaintiff worked as a property manager along with
17 other non-exempt hourly employees in similar and related positions at Defendant’s California
18 facilities, including in Placer County. Defendants operate properties and provide property
19 ownership and management services to customers throughout California.

20 3. Plaintiff and the other similarly situated Employees of Defendants worked based
21 out of Defendants’ facilities and offices in California at Defendants’ behest without being paid all
22 wages due and without being provided all their required meal periods and rest breaks. Upon
23 information and belief, Plaintiff was employed by Defendants and shared similar job duties and
24 responsibilities, was subjected to the same policies and practices, and endured similar violations at
25 the hands of Defendants as the other Employee Class members who served in similar and related
26 positions. Defendants required Plaintiff and the Employees in the Class to work off the clock and
27 failed to record accurate time worked by these Employees, failed to pay them at the appropriate
28 rates for all hours worked, failed to pay all wages due and owing at termination or resignation, and

1 provided Plaintiff and the Class members with inaccurate wage statements that prevented them
2 from learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the
3 Class with lawful meal and rest periods, as Employees were required to remain under Defendants'
4 control and were not provided with the opportunity to take full uninterrupted and duty-free rest
5 periods and meal breaks, as required by the Labor Code and the applicable paragraphs of the IWC
6 Wage Orders.

7 4. Defendant THE CBM GROUP, INC. ("CBM") is a California corporation which is
8 headquartered and maintains its principal executive offices in Auburn, California. CBM is the
9 presumptive employer of Plaintiff as it was listed as her employer on the wage statements issued
10 to her by Defendants, with the same Auburn, California address. CBM's LinkedIn explains they
11 are "[p]roviders of Affordable Housing across the United States."

12
13 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
14 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
15 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
16 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
17 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
18 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Placer County, and
19 Defendants operate facilities and offices in California and are headquartered in Auburn, Placer
20 County, California, where many of the Class members have also been employed.

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

7. 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 Employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of Employees, created and implemented the policies and practices that governed the employment of Plaintiff and the Class members and dictated their job duties and responsibilities, or otherwise suffered or permitted Plaintiff and the other Employee Class members to work, or engaged, thereby creating a common law employment relationship, with the Employee Class members. Therefore, Defendants, and each of them, employed or jointly employed the Employee Class members.

FACTUAL BACKGROUND

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

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

1 10. Defendants provide property management and affordable housing services to
2 customers throughout California. Plaintiff worked as a property manager for Defendants during
3 the relevant time period. The property managers are responsible for collecting rent, overseeing
4 maintenance, and communicating directly with tenants.

5 11. Plaintiff and the class members were generally scheduled to work at least five days
6 per week and worked shifts of 8-9 hours or longer. Plaintiff and the Class members often
7 performed off the clock work or otherwise worked hours for which they were not compensated at
8 the beginning and ending of their shifts.

9 12. Plaintiff and Class Members were subjected to pre and post-shift work due to the
10 Defendant's workload and demands placed upon them. It was impossible for Plaintiff and Class
11 members to complete all job duties during an eight hour work day and they therefore incurred
12 overtime hours which were not properly paid.

13 13. Defendants utilized timekeeping systems and procedures which resulted in
14 inaccurate or incomplete records of clock in and out times for work shifts and meal periods,
15 including by rounding hours down to the detriment of the employees in the Class. This resulted in
16 wide-spread off the clock work where Employees in the Class were not compensated at their
17 required rates for all hours worked, including time when they remained under Defendants'
18 control.

19 14. Defendants systematically and uniformly failed to compensate Plaintiff and the
20 Class members wages as required for all their hours worked and unlawfully deducted wages they
21 earned. Plaintiff and the Class members had their wages unlawfully deducted when Defendants'
22 managers recorded fewer hours worked in the timekeeping records than were in fact worked.

23 15. This led to systematic off the clock work where Employees were working or
24 otherwise under Defendants' control before shift start times, and after shift end times, but they
25 were not compensated by Defendant for all their time, including due to unlawful rounding. This
26 unpaid off the clock work, including that incurred before shift start times, also impacted when
27 employees should have been paid at the applicable hourly overtime rate, as they began incurring
28 overtime later than they should have during a work shift. This led to systematic underpayment of

1 both regular and overtime wages.

2 16. Defendants' wage statements show that Plaintiff was paid a "Bonus," but to
3 whatever extent Defendants also paid overtime during the periods when Defendants paid this
4 Bonus, Defendants unlawfully failed to include this additional remuneration beyond the hourly
5 rates in the regular rate used to calculate and pay any paid time off or overtime rates Defendants
6 paid.

7 17. Given the above described off the clock work, failure to include all bonus
8 compensation in Plaintiff's paid time off rate, overtime rate, and unlawful rounding and deductions
9 from hours worked perpetrated by Defendants' management, Defendants often paid Plaintiff for
10 substantially fewer hours than she actually worked, and that she was not paid at the correct
11 overtime rate for all hours she worked after eight hours into a shift or over forty in a work week.
12 Upon information and belief, the same occurred in connection with the other Class members.

13 18. Defendants also relied heavily on sending text messages to and calling Plaintiff
14 and the Class members on their personal mobile phones regarding daily scheduling issues and
15 regarding other work related matters, and did so without regard to whether they were off duty or
16 otherwise working while attempting to take a break. Moreover, as Plaintiff would sometimes
17 work from home, she was required to use her home internet to complete her job duties. This
18 resulted in further off the clock work where Plaintiff and the Class members were under
19 Defendant's control while performing work duties without compensation. This time was not
20 compensated as hours worked by Defendants, and Defendants failed to reimburse Plaintiff and
21 the Class members for the substantial use of their personal phones and internet data plans for
22 work-related purposes.

23 19. Plaintiff was therefore not paid for all her hours worked at the required minimum,
24 overtime and double time wage rates due to Defendants' policy of unlawful rounding and practice
25 of requiring her to work off the clock and without pay, and failed to pay at the required overtime
26 rates for all hours over eight in a shift, or over forty in a week. With work shifts generally being
27 scheduled for eight hours or more, this unpaid off the clock work resulted in Plaintiff and the
28 Class members working past eight hours on a shift, which required that they be paid at the correct

1 overtime rate of 1.5 times their regular rate. Defendants' management would shave hours worked
2 off of Plaintiff's daily and weekly totals, or otherwise round them down or fail to record them. To
3 the extent Defendants paid Class members any shift differentials and bonuses or other forms of
4 remuneration, Defendants failed to include them in the regular rate used to calculate and pay
5 overtime hours.

6 20. Defendants thus systematically underpaid Plaintiff and the Class members by
7 failing to pay them at the required overtime rates for all hours over eight in a work shift or over
8 forty in a work week, and all hours over twelve in a day at the required double time rate. Upon
9 information and belief, the Class members were bound by similar scheduling and work policies
10 which Defendants required them to follow, and endured similar violations at Defendants' hands.

11 21. Defendants have either failed to maintain timekeeping records for Plaintiff that
12 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants'
13 required and the actual hours Plaintiff worked, or have otherwise declined to produce them to
14 Plaintiff in response to a timely and lawful request. By failing to pay for all hours worked, and by
15 deducting time for meal periods that were not lawfully provided, Defendants have committed
16 knowing and intentional ongoing violations of the record keeping requirements under the Labor
17 Code, including section 1174.

18 22. The failure to pay for all hours worked and underpayment of wages to Plaintiff
19 and the Class members is and has been a direct consequence of Defendants' unlawful
20 compensation policies and practices, which applied uniformly to the Class members working at
21 Defendants' locations throughout California. As a result of the above described unlawful
22 requirements to work off the clock, the failure to accurately record all hours worked and pay
23 wages at the correct rates, and the other wage violations they endured at Defendants' hands,
24 Plaintiff and the Class members were not properly paid all wages earned and all wages owed to
25 them by Defendants, including when working more than eight hours in any given day and/or
26 more than forty hours in any given week. As a result of Defendants' unlawful policies and
27 practices, Plaintiff and Class members incurred overtime hours worked for which they were not
28 adequately and completely compensated, in addition to their incorrectly paid regular hours.

1 23. Therefore, from at least four years prior to the filing of this lawsuit and continuing
2 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
3 hours worked, and failing to pay minimum wages for all time worked, as required by California
4 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
5 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
6 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
7 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
8 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

9 24. Defendants also failed to provide Plaintiff and the Class members with their
10 required first and second meal periods, and their first, second, and third required rest breaks. The
11 above described off the clock work contributed to Defendants' common policy of failing to
12 provide lawful meal periods to Plaintiff and the Class members, as required under the Labor Code
13 and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically failed to
14 authorize and permit Plaintiff and the Class members to take all required 10-minute rest breaks,
15 as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

16 25. Due to the work scheduling and job demands Defendants placed upon Plaintiff and
17 the Class members, and the systematic understaffing Employees had to contend with, Plaintiff
18 and the Class members were pressured to work through breaks and therefore endured similar
19 ongoing meal period and rest break violations at Defendants' hands.

20 26. Plaintiff and the Class members generally worked shifts that entitled them to
21 receive at least one meal period and two to three rest breaks. However, Defendants failed to
22 provide all required meal periods and rest breaks to Plaintiff and the Class members. Defendants
23 followed a uniformly applied policies across all facilities of not providing all required meal
24 periods and rest breaks to their Employees in accordance with the Labor Code and IWC Wage
25 Orders. Meal periods were often not provided during a work shift, as work and production
26 demands and management pressure required Employees to work through breaks. When breaks
27 were provided, they were frequently provided well after five hours into a work shift, and often for
28 less than 30 minutes. Plaintiff was also required to endure shifts of ten hours or more without

1 receiving a second meal period or all her required rest breaks.

2 27. Defendants also followed a policy of denying all required timely and duty-free
3 meal periods for 30 minutes in duration by automatically deducting for meal periods which were
4 presumed to have been properly provided while also systematically shortening breaks by
5 requiring Employees to remain under Defendants' control. Defendants thus failed to provide all
6 the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest
7 periods to Plaintiff and the other Class members, as required by the applicable Wage Order and
8 Labor Code. Defendants did not have a policy or practice which provided or recorded all the
9 legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest
10 periods to the Plaintiff and the other Class members. Plaintiff and other Class members were
11 required to perform work as ordered by Defendants or otherwise remain under Defendants'
12 control for more than five hours during a shift, or ten hours in a shift, but were often required to
13 do so without receiving a lawful, timely, and duty-free 30-minute meal break for every five hours
14 worked. Additionally, as addressed above, Defendants followed a practice of requiring off the
15 clock work, in a manner that would impact when Employees were to receive meal periods and
16 rest breaks, thus leading to further violations.

17 28. As a result, Defendants' failure to provide Plaintiff and the Class members with all
18 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
19 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants have
20 either failed to maintain required records of when meal periods were actually provided or failed to
21 produce them in response to Plaintiff' timely and lawful requests, or else maintained inaccurate
22 and incomplete records. Defendants also failed to pay Employees "premium pay," i.e. one hour of
23 wages at each Employee's effective hourly rate of pay, for each meal period or rest break that
24 Defendants failed to provide or deficiently provided.

25 29. Therefore, for at least four years prior to the filing of this action and through to the
26 present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise not
27 provided with the opportunity to take required meal breaks due to Defendants' policies and
28 practices. On the occasions when Plaintiff and the Class members were provided with a meal

1 period, it was often provided after five hours into a work shift and was therefore untimely or was
2 interrupted, or was impermissibly shortened, and Employees were not provided with one hour's
3 wages in lieu thereof. To the extent Defendants assert they paid any meal period premiums, they
4 failed to do so for all violations. Meal period violations thus occurred in the following manners:

- 5 (a) Class members were not provided full thirty-minute duty free meal periods
6 for work days in excess of five hours and were not compensated one hour's
7 wages in lieu thereof, all in violation of, among others, Labor Code §§
8 226.7, 512, and the applicable Industrial Welfare Commission Wage
9 Order(s);
- 10 (b) Class members were not provided second full thirty-minute duty free meal
11 periods for work days in excess of ten hours;
- 12 (c) Class members were required to work through at least part of their daily
13 meal period(s);
- 14 (d) Meal periods were provided after five hours of continuous work during a
15 shift; and
- 16 (e) Class members were restricted in their ability to take a full thirty-minute
17 meal period or were otherwise required to remain under Defendants'
18 control during meal periods.

19 30. Defendants also failed to authorize and permit Plaintiff and the Class members to
20 take duty-free, net ten minute rest breaks for ever four hours of shift work, or major fraction
21 thereof. Defendants also failed to authorize and permit Plaintiff and the Class members to take
22 their required duty-free, net ten minute rest periods. Rest breaks were not scheduled, as
23 Defendants' policy was not to provide them, and management did not emphasize the requirement
24 to provide at least one ten minute duty-free rest period for each four hour duty period, or major
25 fraction thereof. Thus, on shift of ten hours or more, Defendants were required to provide at least
26 three duty-free ten minute rest breaks to Plaintiff and the Class members. Defendants neglected to
27 do so, and even if Employees were provided with one rest break during a scheduled shift, they
28 were not provided with the required second or third rest breaks.

1 31. Defendants did not schedule any required ten minute rest breaks, and Plaintiff and
2 the Class members were compelled by work requirements and scheduling demands to continue
3 working throughout their shifts without receiving their required first, second, and third rest
4 breaks. On the rest breaks there were authorized and permitted to take, they were often
5 interrupted regarding work matters.

6 32. Therefore, the job requirements and duties required of Plaintiff and the Class
7 members, and the demands from management and customers, manifested a failure to authorize
8 and permit Class members to take all their required rest breaks. Plaintiff and the other similarly
9 situated Class members were either not authorized permitted the opportunity to take a rest break,
10 or were required to remain under Defendants' control and respond to instructions from
11 management and job and customer demands. Defendants also failed to authorize and permit
12 employees to leave the premises during rest breaks, or else prevented them from doing so, thus
13 further evidencing Defendants' policy and practice of requiring Plaintiff and the Class members
14 to remain under their control during required off-duty rest breaks.

15 33. Defendants' policies and practices thus systematically deny and denied Plaintiff
16 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal
17 periods. The California Supreme Court has instructed that the rest period requirement obligates
18 employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest
19 periods employers must relieve employees of all duties and relinquish control over how
20 employees spend their time. Plaintiff and the Class members were and are under Defendants'
21 control when they are working through rest breaks, and Defendants failed to schedule or account
22 for required first, second, and third rest breaks during the shifts Plaintiff and the Class members
23 generally worked.

24 34. Plaintiff and the Defendants' Employees in the Class were therefore not authorized
25 and permitted to take lawful rest periods, were systematically required by Defendants to work
26 through or during breaks, and were not provided with one (1) hour's wages in lieu thereof. They
27 were required to remain on-duty during breaks or portions of their breaks, thus making them
28 either untimely or shortened and on-duty, and they were also prevented from leaving the premises

1 during rest breaks under Defendants' policies and practices. Rest period violations therefore arose
2 in one or more of the following manners:

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

13 35. From at least four years prior to the filing of this lawsuit and continuing to the
14 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
15 deducting the Employees' earned wages, including by the above described off the clock before
16 and after work shifts and automatically deducting 30 minutes of work for unpaid meal periods
17 Defendants failed to provide. As detailed above, Plaintiff's supervisor also got so upset with all
18 the time entry changes he was asked to make for missed or incorrect time punches that he started
19 docking employees an hour of pay whenever he thought an employee missed a time punch. In
20 such instances, Plaintiff and the Class members had their wages unlawfully deducted when
21 Defendants' managers recorded fewer hours worked in the timekeeping records than were in fact
22 worked. By not compensating Employees for all hours worked, and the automatic deductions for
23 unprovided meal periods and failure to pay for hours spent under Defendants' control, Defendants
24 unlawfully deducted wages earned by and owed to Plaintiff and the Class members, in violation of
25 Labor Code § 221.

26 36. As a result of the above described illegal policies and practices, Defendants
27 engaged in and enforced the following additional unlawful practices and policies against Plaintiff
28 and the Class members she seeks to represent:

- (a) failing to pay all wages owed to Class members who either were discharged, laid off, or resigned in accordance with the requirements of Labor Code §§ 201, 202, 203;
- (b) failing to pay all wages owed to the Class members twice monthly in accordance with the requirements of Labor Code § 204;
- (c) failing to pay Class members all wages owed, including all meal and rest period premium wages;
- (d) failing to maintain accurate records of Class members' earned wages and meal periods in violation of Labor Code §§ 226 and 1174(d) and section 7 of the applicable IWC Wage Orders; and
- (e) failing to produce timekeeping records in response to Plaintiff' timely and lawful request to receive them under these authorities.

37. From at least four (4) years prior to the filing of this lawsuit, and continuing to the present, Defendants have also consistently failed to provide Employees with timely, accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws, including by the above-described requirement of off the clock work, failure to pay all overtime, and failure to pay premium wages for unprovided or otherwise unlawful meal and rest breaks. Defendants have also made it difficult to account with precision for the unlawfully withheld wages and meal and rest period compensation owed to Plaintiff and the Class, during the liability period, because they did not implement and preserve a record-keeping method as required for non-exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage Orders. Upon information and belief, time clock punches were not maintained or were not accurately maintained for work shifts and meal periods, which were automatically presumed by Defendants to have been lawfully provided when they were not. Defendants also failed to accurately record and pay for all regular and overtime hours worked by Plaintiff and the Class members.

38. Defendants thus also provided Plaintiff and the Class members with wage statements that failed to accurately report all hours worked and applicable hourly rates for all

1 hours worked. Plaintiff and the Employees in the Class were unable to discern from their wage
2 statements alone the actual hours they worked in total during a pay period.

3 39. Defendants have thus also failed to comply with Labor Code § 226(a) by issuing
4 wage statements that inaccurately reported total hours worked and total wages earned by Plaintiff
5 and the Class members, along with the appropriate applicable rates, among others requirements.
6 Plaintiff and Class members are therefore entitled to penalties not to exceed \$4,000.00 for each
7 employee pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph
8 7 of the applicable California IWC Wage Orders by failing to maintain time records showing
9 when the employee begins and ends each work period, meal periods, wages earned pursuant to
10 Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions
11 from payment of wages and accurately reporting total hours worked by the Class members.

12 40. Defendants also required Plaintiff and the Class members to work hours off the
13 clock for which they were not compensated, including during interrupted or otherwise on-duty
14 meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work
15 conducted on a work shift and a workday, as addressed above. Therefore, when they received
16 wage statements and pay checks, they did not compensate all hours worked on a timely basis,
17 resulting in Defendants' systematic failure to pay all wages owed to Plaintiff and the Class
18 members twice monthly in accordance with the requirements of Labor Code § 204.

19 41. Also, from at least four years prior to filing this lawsuit and continuing to the
20 present, Defendants have also followed a uniform and consistent policy of failing to pay all wages
21 owed to Plaintiff and other similarly situated Employees at the time of their termination or within
22 seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.
23 Defendants' failure to pay wages for all hours worked and failure to pay premiums for overtime
24 and meal periods further evidenced their failure to pay all wages owed to Plaintiff and the Class
25 members at the time they were terminated or otherwise separated from employment, including
26 under Labor Code § 203.

27 42. Additionally, from at least four years prior to the filing of this lawsuit and
28 continuing to the present, Defendants have regularly required Plaintiff and the Class members to

1 incur necessary business expenses in the course of performing their required job duties. This
2 includes requiring Plaintiff and the Class members to use their cellular phones to conduct work
3 related business and to receive and respond to text messages from management. Plaintiff was
4 required to use her cell phone frequently as a primary means of communication with Defendant
5 regarding work scheduling. Defendants would contact Plaintiff without regard to whether she was
6 off-duty after scheduled work hours, and without regard to whether she was taking a break.
7 Moreover, since Plaintiff was required to work from home, she utilized her personal internet
8 service to complete her job duties. Defendants failed to reimburse Plaintiff and the Class members
9 for any of their expenses related to their personal cellular phones, data usage, and internet usage,
10 in violation of Labor Code § 2802.

11 43. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
12 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.7, 510,
13 511, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 1198, and 2802, and California Code of
14 Regulations, Title 8, section 11000 *et seq.*

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

19 CLASS ALLEGATIONS

20 45. Plaintiff bring this class action on behalf of herself and all others similarly situated
21 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the Class” or
22 “Class members”) defined as follows: “All individuals employed by Defendants at any time
23 during the period of four (4) years prior to the filing of this lawsuit and ending on a date as
24 determined by the Court (“the Class Period”), and who have been employed in California as non-
25 exempt, hourly employees. This includes those employed as property managers, maintenance
26 workers, repair personnel, leasing agents, and those in similar and related positions, based out of
27 Defendants’ facilities and offices within the State of California. Further, Plaintiff seeks to
28 represent the Subclasses composed of and defined as follows:

- 1 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
2 compensated for all hours worked for Defendants at the applicable minimum wage.
- 3 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
4 compensated for all hours worked for Defendants at the required rates of pay, including for all
5 hours worked in excess of eight in a day and/or forty in a week.
- 6 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
7 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
8 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.
- 9 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
10 Defendants' policy and/or practice of failing to authorize and permit Employees to take
11 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
12 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.
- 13 e. Subclass 5. Wage Statement Subclass. All Class members who, within the
14 applicable limitations period, were not provided with accurate itemized wage statements.
- 15 f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members
16 who were subject to Defendants' policy and/or practice of deducting wages earned from their pay,
17 including by requiring off the clock work.
- 18 g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class
19 members who were subject to Defendants' policy and practice of not timely paying all wages
20 earned when they were due and payable at least twice monthly.
- 21 h. Subclass 8. Termination Pay Subclass. All Class members who, within the
22 applicable limitations period, either voluntarily or involuntarily separated from their employment
23 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
24 termination.
- 25 i. Subclass 9. Expense Reimbursement Subclass. All Class members who incurred
26 necessary and reasonable expenses in connection with performing their job duties for Defendants
27 and who were subject to a policy and/or practice under which such expenses were not reimbursed.
28

1 j. Subclass 10. UCL Subclass. All Class members who are owed restitution as a
2 result of Defendants' business acts and practices, to the extent such acts and practices are found to
3 be unlawful, deceptive, and/or unfair.

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

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

17 48. This action has been brought and may properly be maintained as a class action
18 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
19 of interest in this litigation and the proposed Class is easily ascertainable from the employment
20 records for Plaintiff and the Class members that Defendants are required to maintain under
21 California law.

22 **A. Numerosity**

23 49. The potential members of the Class as defined are so numerous that joinder of all
24 the Class members is impracticable. While the precise number of Class member has not been
25 determined at this time, Plaintiff are informed and believes that Defendants employ or, during the
26 time period relevant to this lawsuit employed, at least 100 Employees who satisfy the Class
27 definition within the State of California. Plaintiff alleges that Defendants' employment records
28 will provide information as to the number and location of all Class members.

B. Commonality

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

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Employees to take requisite rest breaks or provide premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements;
- g. Whether Defendants violated Labor Code § 221;
- h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- i. Whether Defendants' conduct was willful;
- j. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of Class members' earned wages and work periods;
- k. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or

overtime;

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

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

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

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

C. Typicality

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

D. Adequacy of Representation

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

E. Superiority of Class Action

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

54. 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

1 members. Further, as the economic or other loss suffered by vast numbers of Class members may
2 be relatively small, the expense and burden of individual actions makes it difficult for the Class
3 members to individually redress the wrongs they have suffered. Moreover, in the event
4 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
5 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
6 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
7 to vindicate their rights for violations they endured which they would otherwise be foreclosed
8 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

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

16 56. Defendants, as prospective and actual employers of the Employees in the Class,
17 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
18 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
19 Employees as well as the effect of any alleged arbitration agreements that may have been forced
20 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
21 and policies, most notably intentionally refusing to pay for all hours actually worked which should
22 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
23 agreements and policies and practices on the Employees and Class as a whole.

24 57. Plaintiff and the Employees in the Class did not discover the fact that they were
25 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
26 any discussion about Plaintiff' and the Class' wavier of their Constitutional rights of trial by jury,
27 to collectively organize and oppose unlawful pay practices under California law as well as obtain
28 injunctive relief preventing such practices from continuing. As a result, the applicable statutes of

1 limitation tolled until such time as Plaintiff and the Class members discovered their claims.

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PAY MINIMUM WAGES**

4 **(Against All Defendants)**

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

7 59. Defendants failed to pay Employees minimum wages they were owed, including
8 by their consistent policy of failing to pay Employees for all hours worked. Employees would
9 work hours and not receive wages, including as alleged above in connection with off the clock
10 work, including all the time required to remain on duty and under Defendants' control and during
11 breaks and due to the work demands placed upon them by Defendants' management. Defendants
12 also imposed difficult to attain job and shift scheduling requirements on Plaintiff and the Class
13 members, which resulted in off the clock work and underpayment of all wages owed to
14 Employees over a period of time, while benefiting Defendants. During the relevant time period,
15 Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class members,
16 including by requiring systematic off the clock work and by unlawful rounding. Defendants'
17 uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to
18 the Class as a whole, as a result of implementing a uniform policy and practice that denied
19 accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

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

1 61. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
2 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
3 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

4 62. The applicable minimum wage rate fixed by the commission for work during the
5 relevant period is found in the Wage Orders.

6 63. The minimum wage provisions of California Labor Code are enforceable by private
7 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
8 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
9 overtime compensation applicable to the employee is entitled to recover in a civil action the
10 unpaid balance of the full amount of this minimum wage or overtime compensation, including
11 interest thereon, reasonable attorney’s fees and costs of suit.”

12 64. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
13 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
14 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
15 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
16 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
17 the absence of a contractually agreed upon one. The underpayment of wages to Plaintiff and the
18 Class members is and has been a direct consequence of Defendants’ unlawful compensation
19 policies and practices, which applied uniformly to the Class members working at locations
20 throughout California.

21 65. In committing the above described violations of the California Labor Code,
22 Defendants inaccurately recorded, or required Plaintiff and the Class members to input times that
23 did not reflect their actual hours worked, or calculated the correct time worked and consequently
24 underpaid the actual time worked by Plaintiff and other members of the Class, including by
25 requiring off the clock work and rounding, as addressed in detail above. Defendants acted in an
26 illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
27 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws
28

1 and regulations. As a result of these violations, Defendants also failed to timely pay all wages
2 earned in accordance with California Labor Code § 1194.

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

7 67. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
8 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
9 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
10 pay each employee minimum wages.

11 68. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
12 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
13 interest thereon.

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

17 70. Wherefore, Plaintiff and the Employee Class members are entitled to recover the
18 unpaid minimum wages (including double minimum wages), liquidated damages in an amount
19 equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees
20 and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of
21 the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs,
22 as well as the assessment of any statutory and/or civil penalties against Defendants, in a sum as
23 provided by the California Labor Code, including § 558, and/or other applicable statutes. To the
24 extent minimum wage compensation is determined to be owed to the Class members who have
25 terminated their employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202,
26 and therefore these individuals are also be entitled to waiting time penalties under California
27 Labor Code § 203, which penalties are sought herein on behalf of these Class members.
28 Defendants’ failure to timely pay all wages owed also violated Labor Code § 204 for failure to pay

1 all wages owed twice monthly, and resulted in violations of Labor Code § 226 because they
2 resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was
3 willful, intentional and not in good faith. Further, Plaintiff and other Class members are entitled to
4 seek and recover statutory costs.

5 **SECOND CAUSE OF ACTION**

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

7 **(Against All Defendants)**

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

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

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

1 74. Defendants thus had a consistent policy of not paying Employees wages for all
2 hours worked, including hours at their required regular, overtime, and double-time rates, and as
3 required under applicable living wage ordinances. Defendants required Plaintiff and the Class
4 members to work off the clock to avoid paying all their earned and owed straight time and
5 overtime wages and other benefits, in violation of the California Labor Code, the California Code
6 of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor
7 Standards and Enforcement. Defendants have also violated these provisions by requiring Plaintiff
8 and other similarly situated non-exempt employees to work through meal periods when they were
9 required to be clocked out or to otherwise work off the clock to complete their daily job duties or
10 and participate in company required activities or remain under Defendants' control. Therefore,
11 Employees were not properly compensated, nor were they paid overtime rates for hours worked in
12 excess of eight hours in a given day, and/or forty hours in a given week. Based on information and
13 belief, Defendants did not make available to Employees a reasonable protocol for correcting time
14 records when Employees worked overtime hours or to fix incorrect time entries or those that
15 Defendants unlawfully under-recorded to the Employee's detriment. Defendants also under-paid
16 Plaintiff and the putative Class members all wages by systematically miscalculating and
17 underpaying overtime wages they earned.

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

22 76. Additionally, Labor Code § 558(a) provides "any employer or other person acting
23 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
24 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
25 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
26 pay period for which the employee was underpaid in addition to an amount sufficient to recover
27 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
28 underpaid employee for each pay period for which the employee was underpaid in addition to an

1 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
2 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in
3 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
4 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
5 Wage Orders. Accordingly, Class members seek the remedies under Labor Code § 558.

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

12 78. Employees have been damaged by these violations of California Labor Code §§
13 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
14 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
15 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
16 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
17 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
18 any order or ruling of the commission.”

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

26 ///

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

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

20 83. Defendants thus failed to provide Plaintiff and the Class members with meal
21 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
22 including by not providing them with the opportunity to take meal breaks, by providing them late
23 or for less than thirty (30) minutes, or by requiring them to perform work during breaks.

24 84. Moreover, Defendants failed to compensate Employees for each meal period not
25 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
26 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
27 employee a meal period in accordance with this section, the employer shall pay the employee one
28 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal

1 period is not provided. Defendants failed to compensate the Employees in the Class for each meal
2 period not provided or inadequately provided, as required under Labor Code § 226.7 and
3 paragraphs 11 and 20 of the applicable IWC Wage Order.

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

10 **FOURTH CAUSE OF ACTION**

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

12 **(Against All Defendants)**

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

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

18 88. Employees consistently worked consecutive four (4) hour shifts and were generally
19 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
20 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
21 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten (10) minutes for
22 each consecutive four (4) hour shift, and Defendants failed to provide Employees with timely rest
23 breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Employees were
24 often required to work or to otherwise remain under Defendants' control during rest periods, and
25 had breaks provided untimely as a result of the above described off the clock work. Plaintiff and
26 the Class members were also not permitted to leave their work premises during rest breaks.

27 89. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage
28 Orders provide that if an employer fails to provide an employee rest period in accordance with this

1 section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
2 compensation for each workday that the rest period is not provided.

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

6 91. Defendants failed to authorize and permit Plaintiff and the Class members to take
7 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
8 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
9 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
10 12 and 20 of the applicable IWC Wage Orders.

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

16 **FIFTH CAUSE OF ACTION**

17 **VIOLATION OF LABOR CODE § 226(a)**

18 **(Against All Defendants)**

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

21 94. California Labor Code § 226(a) requires an employer to furnish each of his or her
22 employees with an accurate, itemized statement in writing showing the gross and net earnings,
23 total hours worked, and the corresponding number of hours worked at each hourly rate; these
24 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
25 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
26 statements may be given to the employee separately from the payment of wages; in either case the
27 employer must give the employee these statements twice a month or each time wages are paid.
28

1 95. Defendants failed to provide Plaintiff and the similarly situated Employee Class
2 members with accurate itemized wage statements in writing, as required by the Labor Code and
3 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to
4 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
5 including by failing to pay for all hours worked, failure to pay for all overtime hours worked and
6 for providing deficient meal periods and rest breaks, all of which Defendants knew or reasonably
7 should have known were owed to the Employees, as alleged above.

8 96. Defendants also provided Plaintiff and the Class members with wage statements
9 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
10 Due to Defendants' failure to record and compensate for all hours worked or failure to do so
11 accurately, Plaintiff and the Employees in the Class were unable to discern from their wage
12 statements along the actual hours they worked in total during a pay period.

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

25 98. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
26 and intentional failure to provide them with the wage and hour statements as required by law and
27 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
28 Defendants have failed to provide an accurate wage statement, failed to provide accurate and

1 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
2 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the
3 wage statement alone one or more of the following: (i) The amount of the gross wages or net
4 wages paid to the employee during the pay period or any of the other information required to be
5 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
6 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
7 wages paid to the employee during the pay period, (iii) The name and address of the employer
8 and, (iv) The name of the employee and only the last four digits of his or her social security
9 number or an employee identification number other than a social security number. For purposes
10 of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an
11 objective standard] would be able to readily ascertain the information without reference to other
12 documents or information.

13 99. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
14 are required “to pay each employee, on the established payday for the period involved, not less
15 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
16 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
17 or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members
18 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
19 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
20 IWC Wage Orders.

21 100. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
22 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
23 Class suffered injuries, including among other things confusion over whether they received all
24 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
25 them to make mathematical computations to analyze whether the wages paid in fact compensated
26 them correctly for all hours worked.

27 101. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
28 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of

1 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
2 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
3 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to
4 an award of costs and reasonable attorneys' fees.

5 **SIXTH CAUSE OF ACTION**
6 **VIOLATION OF LABOR CODE § 221**
7 **(Against All Defendants)**

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

10 103. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
11 receive from an employee any part of wages theretofore paid by said employer to said employee."
12 Pursuant to California Labor Code § 204, other applicable laws and regulations, and public policy,
13 an employer must timely pay its employees for all hours worked. Defendants failed to do so.

14 104. Defendants unlawfully received and/or collected wages from the Employees in the
15 Class by implementing a policy understating the hours worked by Employees by requiring off the
16 clock work and by automatically deducting time for meal periods when they were not lawfully
17 provided, as alleged above. As also detailed above, Plaintiff's supervisor also got so upset with all
18 the time entry changes he was asked to make for missed or incorrect time punches that he started
19 docking employees an hour of pay whenever he thought an employee missed a time punch. In
20 such instances, Plaintiff and the Class members had their wages unlawfully deducted when
21 Defendants' managers recorded fewer hours worked in the timekeeping records than were in fact
22 worked. By not compensating Employees for all hours worked, and the automatic deductions for
23 unprovided meal periods and failure to pay for hours spent under Defendants' control, Defendants
24 unlawfully deducted wages earned by and owed to Plaintiff and the Class members, in violation of
25 Labor Code § 221.

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

28

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

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

107. 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. This included failing to pay all wages due and owing to Plaintiff and the Class members for all hours they worked and failing to pay all wages earned by not more than seven calendar days following the close of the payroll period.

108. Defendants also required Plaintiff and the Class members to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday, as addressed above. Therefore, when Class members received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants’ systematic failure to pay all wages owed to Plaintiff and the Class members twice monthly in accordance with the requirements of Labor Code § 204.

1 109. Given the above described off the clock work and unlawful rounding and
2 deductions from hours worked perpetrated by Defendants' management, Plaintiff would often
3 notice on her wage statements that she was being paid for substantially fewer hours than she
4 actually worked, and that she was not paid at the correct overtime rate for all hours she worked
5 after eight hours into a shift or over forty in a work week. Defendants' uniformly applied payroll
6 policies and practices thus resulted in further systematic and ongoing violations of the
7 requirements of Labor Code § 204.

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

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

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

27 ///

28 ///

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

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

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

115. Defendants failed to pay these Employees all wages due and certain at the time of termination or within seventy-two (72) hours of resignation, as addressed in detail above.

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

117. Defendants failed to pay Plaintiff and the Class members without abatement, all wages as defined by applicable California law. Among other things, these Employees were not paid all regular and overtime wages, including by Defendants failing to pay for all hours worked or requiring off the clock work or by unlawfully under-recording time entries to the detriment of Employees, and 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.

118. 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 violations of Labor Code § 203 and paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders. Also, under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less than \$100 for causing Employees "to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission" or if the

1 employer pays “a wage less than the minimum fixed by an order of the commission” or
2 “violates...any provision of this chapter or any order or ruling of the commission.”

3 119. Defendants’ failure to pay wages, as alleged, entitles Plaintiff and these former
4 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of
5 the IWC Wage Orders as addressed above, including the requirement that an employee’s wages
6 shall continue until paid for up to thirty (30) days from the date they were due.

7 **NINTH CAUSE OF ACTION**

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

9 **(Against All Defendants)**

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

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

16 122. During the course of Plaintiff’s and Employees’ employment, Defendants
17 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as
18 required by California Labor Code § 1174 by failing to pay them proper wages, overtime, and
19 premium pay as discussed above and failing to document and pay for actual hours worked.

20 123. Defendants are also required by the California Labor Code § 1198 and the
21 applicable Wage Order to maintain a tracking system that accurately records the times during
22 which Employees work.

23 124. Defendants have maintained a common unlawful policy and practice of failing to
24 accurately record all hours worked and all meal period start and end times.

25 125. Defendants’ failure to pay wages, as alleged above, was willful in that Defendants
26 knew wages to be due but failed to pay them.

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

TENTH CAUSE OF ACTION
FOR FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES
UNDER LABOR CODE § 2802
(Against All Defendants)

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

128. Plaintiff and the Class are informed and believe and based thereon alleges that throughout the period applicable, Defendants required Plaintiff and the Class members to pay for necessary work related expenses they incurred. Defendants required Plaintiff and the Class members to use their cellular phones to conduct work related business and to receive scheduling and location assignments. Defendants also used the personal cellular phones for the Class members as the primary means for contacting them both during and after work shifts regarding work scheduling or other company specific business, and Plaintiff and other similarly situated employees were required to respond. Plaintiff was also required to use her personal internet service to complete her work while working from home and was never reimbursed. Moreover, this also prevented them from taking uninterrupted and duty-free rest breaks and meal periods.

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

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

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

ELEVENTH CAUSE OF ACTION
VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.*
(Against All Defendants)

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

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

134. Plaintiff are “persons” within the meaning of Business & Professions Code § 17204, have suffered injury, and therefore have standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

135. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices. By the conduct alleged herein, Defendants' practices were deceptive and fraudulent in that Defendants' policy and practice failed to provide the required amount of compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and Class members for all hours worked or reimburse them for necessary business expenses, due to systematic business practices as alleged herein that cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare Commission requirements in violation of California Business and Professions Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California Business & Professions Code § 17203, including

1 restitution of wages wrongfully withheld.

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

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

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

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

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

28

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

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

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

- 1 8. For restitution and/or damages and penalties for Defendants' failure to pay all
2 wages due twice monthly under Labor Code § 204, as may be proven;
- 3 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
4 for all class members in violation of Labor Code § 221, as may be proven;
- 5 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
6 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 7 11. For damages and restitution for failure to reimburse all reasonable and necessary
8 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;
- 9 12. For liquidated damages pursuant to California Labor Code 1194.2(a) for failure to
10 pay minimum wage;
- 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 other wages and penalties under the Labor Code as may be proven;
- 17 16. For all general, special, and incidental damages as may be proven;
- 18 17. For an award of pre-judgment and post-judgment interest;
- 19 18. For an award providing for the payment of the costs of this suit;
- 20 19. For an award of attorneys' fees; and
- 21 20. For such other and further relief as this Court may deem proper and just.

22
23 DATED: June 24, 2024

D.LAW, INC.

24
25 By



David Yermian
Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Plaintiff ALICIA D. COLE,
on behalf of herself and all others similarly
situated

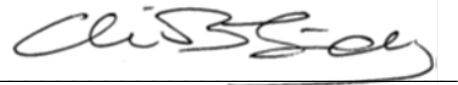
DEMAND FOR JURY TRIAL

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

DATED: June 24, 2024

D.LAW, INC.

By



David Yermian
Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Plaintiff ALICIA D. COLE,
on behalf of herself and all others similarly
situated