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on behalf of herself and all others similarly situated

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Superior Court of California
County of Fresno
By: Marta Sanchez, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO

GLORIA A. AMESCUA, an individual, on
behalf of herself and others similarly
situated,

Plaintiff,

vs.

CENTRAL CALIFORNIA BLOOD
CENTER., a California corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 24CECG02710

CLASS ACTION

Assigned for All Purposes To:
Hon. Jeffrey Y. Hamilton, Jr.
Dept.: 503

**FIRST AMENDED 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 Labor Code § 226.7;
4. Rest-Break Liability 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 Expenses Under Labor Code § 2802; and
11. Violation of Business & Professions Code § 17200 *et seq.*; and
12. Penalties under PAGA Labor Code § 2698

DEMAND FOR JURY TRIAL

Original Complaint Filed: June 24, 2024
Trial Date: None Set

1 Plaintiff GLORIA A. AMESCUA (hereinafter “Plaintiff”), on behalf of herself and all
2 other similarly situated non-exempt, hourly employees employed by Defendants in California
3 during the relevant period (collectively, “Employees”; individually, “Employee”) complains of
4 Defendants as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of herself and all current and former
7 Employees within the State of California who, at any time four years prior to the filing of this
8 lawsuit, are or were employed as non-exempt, hourly employees by Defendants CENTRAL
9 CALIFORNIA BLOOD CENTER (“CCBC”), a California corporation, and DOES 1 through 50
10 (all defendants being collectively referred to herein as “Defendants”). Plaintiff alleges that
11 Defendants violated various provisions of the California Labor Code, relevant orders of the
12 Industrial Welfare Commission (IWC), and California Business & Professions Code, and seeks
13 redress for these violations.

14 2. Plaintiff worked as a phlebotomist at Defendants’ facilities and locations in
15 California. Defendants employed other similarly situated Class members as phlebotomists, clerical
16 workers, nurses, and in similar and related positions in connection with blood donation collection
17 and processing services they provided to Defendants’ customers throughout California. Plaintiff
18 and the other similarly situated Class members worked at Defendants’ behest without being paid
19 all wages due and without being provided all required breaks. More specifically, Plaintiff and the
20 other similarly situated Class members were employed by Defendants and shared similar job
21 duties and responsibilities, were subjected to the same policies and practices, and endured similar
22 violations at the hands of Defendants as the other Employees who served in similar and related
23 positions.

24 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
25 and failed to record accurate time worked by these Employees, failed to pay them at the
26 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
27 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that
28 prevented them from learning of these unlawful pay practices. Defendants also failed to provide

1 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain
2 under Defendants' control and were not provided with the opportunity to take full uninterrupted,
3 timely, and duty-free rest periods and meal breaks, as required by the Labor Code and the
4 applicable paragraphs of the IWC Wage Orders.

5 4. Defendant CCBC is a California corporation which lists its principal address with
6 the California Secretary of State in Fresno, California. Defendant CCBC is listed as the employer
7 on the wage statements issued to Plaintiff by Defendants, and upon information and belief to other
8 Class members, with the same Fresno address. Upon information and belief, CCBC operates
9 various facilities, including the Fresno facility where Plaintiff worked. On information and belief,
10 Defendants maintain operations and locations throughout Fresno County and California. CCBC's
11 website explains that: "Today, the Central California Blood Center (CCBC) remains the leading
12 source of blood products for the Valley's providers. Serving a population base of over 1.9 million
13 people, the CCBC must collect between 5,000 and 6,000 pints of blood must be collected each
14 month to meet the Central Valley's needs...We provide blood and services to patients who receive
15 care at over 20 hospitals and their network of facilities in Fresno, Tulare, Madera, Kings, and
16 Mariposa Counties."

17 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
18 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
19 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
20 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
21 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
22 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Fresno County,
23 where Defendants are headquartered and operate and provide blood collection and handling
24 services to California customers.

25 6. The true names and capacities, whether individual, corporate, associate or whatever
26 else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to
27 Plaintiff, who therefore sues these Defendants by such fictitious names under Code of Civil
28 Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants designated

1 herein as Does 1 through 50, inclusive, and each of them, is legally responsible in some manner
2 for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint
3 to reflect the true names and capacities of the Defendants designated herein as Does 1 through 50
4 when their identities become known.

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

16 **FACTUAL BACKGROUND**

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

27 9. During the course of Plaintiff and the Class members' employment with
28 Defendants, they were not paid all wages they were owed, including for all work performed

1 (resulting in “off the clock” work) and for all their overtime hours worked, or were not paid at the
2 correct rates. This has resulted in systematic and ongoing violations of the California Labor Code
3 and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-
4 exempt, hourly employees as blood collecting workers based out of Defendants’ facilities in
5 California.

6 10. Plaintiff was employed by Defendant as a phlebotomist, with duties that included
7 drawing blood, collecting money, and making appointments with donors. Plaintiff generally
8 worked over 40 hours per week, five to six shifts per week. Plaintiff’s scheduled hours were
9 generally from 8:00 a.m. through 5:00 p.m. or longer.

10 11. Despite their obligation to maintain accurate timekeeping records for hours
11 worked by the Class members, Defendants paid employees by their scheduled hours or the
12 desired number of hours Defendants wanted to pay rather than their actual hours worked. During
13 this time, meal periods were also deducted from Employees’ shifts without any record indicating
14 the Class members actually received them. At all times during Plaintiff’s employment,
15 Defendants failed to accurately record Employees actual time worked, rounded down and shaved
16 total hours worked to the detriment of Employees, and automatically deducted meal periods from
17 Employees shifts.

18 12. The failure to maintain accurate timekeeping and payroll records perpetrated by
19 Defendants has also been exacerbated by other off the clock work Defendants required their
20 Employees to endure. In order to complete their duties, Employees were compelled to arrive at
21 Defendants’ facilities sufficiently before their scheduled shift start time. Upon arrival, Employees
22 were expected to immediately begin performing quality control on the machines and other tasks
23 in preparation for the workday. Employees were provided badges to scan their entry into the
24 building which was otherwise locked. Employees were also required to complete off the clock
25 work during their purported meal periods. Employees were not permitted to leave the facility at
26 any time and were required to remain on standby to attend to donor and customer needs. Thus,
27 Employees had to rush through their meals and resume working if a donor arrived. Plaintiff and
28 the Class members were thus also required to work or otherwise remain under Defendants’

1 control after their shift end times, including on site and through after-hours work-related
2 communications and other work requirements.

3 13. Defendants did this, upon information and belief, in connection with other
4 Employees in a concerted effort to limit and restrict regular and overtime incurred by Plaintiff
5 and the other Class members. Time worked off the clock also caused Plaintiff and other Class
6 members to work beyond eight hours. As a result of the above-described rounding and other off
7 the clock work, Defendants failed to pay Plaintiff and Class members overtime for several
8 minutes to hours at the end of work shifts which Defendants did not record in timekeeping.

9 14. Plaintiff was therefore not paid for all her hours worked at the required minimum,
10 overtime and double time wage rates due to Defendants' policy and practice of requiring her to
11 work off the clock and without pay. With work shifts generally scheduled for eight hours or
12 more, this unpaid off the clock work resulted in Plaintiff and the Class members working past
13 eight hours on a shift, which required that they be paid at the correct overtime rate of 1.5 times
14 their regular rate. Defendants thus systematically underpaid Plaintiff and the Class members by
15 failing to pay them at the required overtime rates for all hours over eight in a work shift or over
16 forty in a work week, and all hours over twelve in a day at the required double time rate. Upon
17 information and belief, the Class members were bound by similar scheduling and work policies
18 which Defendants required them to follow and endured similar violations at Defendants' hands as
19 Plaintiff.

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

26 16. As a result of the above-described unlawful requirements to work off the clock,
27 the failure to accurately record all hours worked and unlawful rounding, and the other wage
28 violations they endured at Defendants' hands, Plaintiff and the Class members were not properly

1 paid all wages earned and all wages owed to them by Defendants, including when working more
2 than eight hours in any given day and/or more than forty hours in any given week. As a result of
3 Defendants' unlawful policies and practices, Plaintiff and Class members incurred overtime hours
4 worked for which they were not adequately and completely compensated, in addition to the hours
5 they were required to work off the clock at their regular rates.

6 17. The failure to pay for all hours worked and underpayment of wages to Plaintiff
7 and the Class members is and has been a direct consequence of Defendants' unlawful
8 compensation policies and practices, which upon information and belief applied uniformly to the
9 Class members working at Defendants' locations and facilities. As a result of the above-described
10 unlawful requirements to work off the clock and regular rate miscalculation, the failure to
11 accurately record all hours worked and pay wages at the correct rates, and the other wage
12 violations they endured at Defendants' hands, Plaintiff and the Class members were not properly
13 paid all wages earned and all wages owed to them by Defendants, including when working more
14 than eight hours in any given day and/or more than forty hours in any given week.

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

27 19. Defendants also failed to provide Plaintiff and the Class members with their
28 required meal periods and the at least two ten-minute rest breaks required for scheduled shifts of

1 eight hours. Demanding workloads contributed to Defendants' common policy of failing to
2 provide lawful meal periods to Plaintiff and the Class members, as required under the Labor Code
3 and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically failed to
4 authorize and permit Plaintiff and the employee Class Members to take all required 10-minute
5 rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

6 20. More specifically, Plaintiff worked shifts that entitled her to at least one meal
7 period, but Defendants' supervisor required Plaintiff and the Class members to prioritize attending
8 to donor and customer needs over taking proper meal periods. In fact, Defendants made no effort
9 to even schedule or otherwise account for time for Plaintiff and the Class members to use for duty-
10 free, net thirty minute meal periods. Employees were required to remain at the facility. During the
11 majority of Plaintiff's employment, Defendants failed to record any meal periods and
12 automatically deducted at least thirty minutes from Employees' time worked, regardless of
13 whether Employees actually received their meal periods in full. To the extent Defendants required
14 Plaintiff to work over ten hours on a work shift, Defendants also failed to provide second meal
15 periods and Defendants have produced no evidence of payments for meal period violations under
16 Labor Code 226.7. To the extent Defendants have paid any such premiums, upon information and
17 belief they failed to include all forms of remuneration, including wage differentials, in the regular
18 rate at which Defendants paid the premium. Plaintiff has no recollection of agreeing to waive any
19 of her meal periods and had no desire to do so.

20 21. Defendants thus failed to provide all the legally required unpaid, off-duty meal
21 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
22 members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
23 members were required to perform work as ordered by Defendants for more than five hours during
24 a shift without receiving compliant meal periods. Additionally, as addressed above, Defendants
25 followed a practice of requiring off the clock work and rounding and time shaving in a manner
26 that would impact when Employees were to receive meal periods and rest breaks, and required
27 them to respond to work calls and inquiries and other demands during breaks, thus leading to
28 further violations.

1 22. Upon information and belief, Defendants' systems did not automatically generate a
2 meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours
3 into a work shift or in the event the time punch records reflected a meal period of less than thirty
4 minutes. However, upon information and belief, in the event Defendants did pay any meal period
5 premiums, they did so at the employee's customary regular rate of hourly compensation without
6 including all forms of remuneration in that hourly rate calculation, for example by omitting wage
7 differentials and the like from the rate at which meal premiums were paid.

8 23. As a result, Defendants' failure to provide Plaintiff and the Class members with all
9 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
10 periods is and will be evidenced by Defendants' business records, or lack thereof. Therefore, for at
11 least four years prior to the filing of this action and through to the present, Plaintiff and the Class
12 members were unable to take off-duty breaks or were otherwise not provided with the opportunity
13 to take required breaks as required under the Labor Code and Wage Orders due to Defendants'
14 policies and practices. On the occasions when Plaintiff and the Class members were provided with
15 a meal period, it was often untimely or interrupted, or was impermissibly shortened, and
16 Employees were not provided with one hour's wages in lieu thereof. Meal period violations thus
17 occurred in one or more of the following manners:

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

1 (e) Class members were restricted in their ability to take a full thirty-minute
2 meal period and were not permitted to leave their work premises during
3 meal periods and were otherwise required to remain under Defendants'
4 control during meal periods.

5 24. Similar violations resulted from Defendants' failure to authorize and permit
6 Plaintiff and the Class members to take duty-free, net ten minute rest breaks for every four hours
7 of shift work, or major fraction thereof. Plaintiff and the other similarly situated Class members
8 were either not authorized permitted the opportunity to take a rest break, or were required to
9 remain under Defendants' control and respond to instructions from management and job and
10 customer demands if and when they even attempted to take one. Upon information and belief,
11 Defendants also failed to authorize and permit employees to leave the premises during rest
12 breaks, evidencing Defendants' policy and practice of requiring Plaintiff and the Class members
13 to remain under their control during required off-duty rest break times.

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

27 26. Defendants' uniformly applied policies and practices thus resulted in untimely and
28 shortened or on-duty rest breaks when they were authorized and permitted. Plaintiff and the Class

1 members worked shifts of at least eight hours, which required at least two rest breaks, and often
2 worked shifts over ten hours, which required at least three rest breaks. Even on the occasions
3 when Defendants authorized and permitted Plaintiff to take a first rest break, she was not
4 permitted to take a second or a third break, and those that were provided were often late and
5 generally interrupted by job duties and requirements.

6 27. During rest periods, employers must relieve employees of all duties and relinquish
7 control over how employees spend their time. Plaintiff and the Class members were and are under
8 Defendants' control when they are working through rest breaks and remaining under Defendants'
9 control. Defendants have also provided either impermissibly shortened or untimely meal and rest
10 breaks to Plaintiff and the Class members. Plaintiff and the Employees in the Class were thus not
11 authorized and permitted to take lawful rest periods, were systematically required by Defendants
12 to work through or during breaks, and were not provided with one hour's wages in lieu thereof.
13 They were required to remain on-duty during breaks or portions of their breaks, thus making
14 them either untimely or shortened and on-duty, and they were also prevented from leaving the
15 premises and otherwise remain under Defendants' control during rest breaks under Defendants'
16 uniformly applied policies and practices. Rest period violations therefore arose in one or more of
17 the following manners:

18 (a) Class members were required to work without being provided a minimum
19 ten minute rest period for every four hours or major fraction thereof worked
20 and were not compensated one hour of pay at their regular rate of
21 compensation for each workday that a rest period was not provided, and to
22 the extent Defendants paid any premiums, they failed to include all forms of
23 remuneration in the regular rate used to calculate and pay them.

24 (b) Class members were not authorized and permitted to take timely rest periods
25 for every four hours worked, or major fraction thereof; and

26 (c) Class members were required to remain on duty and under Defendants'
27 control during rest periods or otherwise had their rest periods interrupted by
28 work demands.

1 28. From at least four years prior to the filing of this lawsuit and continuing to the
2 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
3 deducting the Employees' earned wages, including by requiring off the clock work during breaks
4 and before and after work shifts and by miscalculating the regular rate and accordingly
5 underpaying overtime wages and meal and rest break premiums. By not compensating Employees
6 for all hours worked at the correct rates, Defendants unlawfully deducted wages earned by and
7 owed to Plaintiff and the Class members, in violation of Labor Code § 221.

8 29. Defendants also violated California Labor Code § 246 by not providing all
9 required paid sick days to Plaintiff and the similarly aggrieved Employees. Labor Code § 246
10 provides that an Employee who "works in California for the same employer for 30 or more days
11 within a year from the commencement of employment is entitled to paid sick days as specified in
12 this section." Paid sick time for nonexempt employees shall be calculated in the same manner as
13 the regular pay rate for the workweek in which the employee uses the paid sick time. Defendants
14 failed to provide Plaintiff and the other similarly Aggrieved Employees with all their required and
15 earned sick days paid at the correct rate of pay, in violation of Labor Code § 246. Additionally
16 and upon information and belief, Defendants have failed to provide COVID-19 supplemental sick
17 leave to the Class members during the relevant time period, including by failing to provide two
18 work weeks of COVID-19 supplemental paid sick leave paid at the correct rates as required under
19 Labor Code §§ 248.1 and 248.2 and including damages and penalties as these sections are
20 enforced through Labor Code § 248.5, which requires that: "If paid sick days were unlawfully
21 withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or
22 two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate
23 penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty."
24 Plaintiff accordingly seek this relief available for Defendants' failure to provide Employees with
25 all their required and earned sick days and all their COVID-19 supplemental sick leave in
26 violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and
27 applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and
28 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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

13 31. As a result of these illegal policies and practices, Defendants also engaged in and
14 enforced the following additional unlawful practices and policies against Plaintiff and the Class
15 members she seeks to represent:

- 16 (a) failing to pay all wages owed to Class members who either were discharged,
17 laid off, or resigned in accordance with the requirements of Labor Code §§
18 201, 202, 203;
- 19 (b) failing to pay all wages owed to the Class members twice monthly in
20 accordance with the requirements of Labor Code § 204;
- 21 (c) failing to pay Class members all wages owed, including all meal and rest
22 period premium wages, and failing to pay them at the regular rate of
23 compensation;
- 24 (d) failing to maintain accurate records of Class members’ hours worked and
25 earned wages and meal periods in violation of Labor Code §§ 226 and
26 1174(d) and section 7 of the applicable IWC Wage Orders; and
- 27 (e) failing to produce timekeeping records in response to Plaintiff’s timely and
28 lawful request to receive them under these authorities.

1 32. Defendants have also failed to provide Class members with wage statements, as
2 required by California wage-and-hour laws. As noted above, Defendants did not consistently
3 provide wage statements to Employees. Some pay periods, Plaintiff was paid in cash with no wage
4 statement provided. On other occasions, she would be provided a check along with a wage
5 statement but the wage statement's data was not reflective of Plaintiff's actual pay rate or hours
6 worked. On information and belief, other Employee Class members were also paid in similar
7 fashion and defendants thus systematically violated Labor § Code 204.

8 33. Moreover, Defendants have also consistently failed to provide Class members with
9 timely, accurate, and itemized wage statements, in writing, as required by California wage-and-
10 hour laws, including by the above-described requirement of off the clock work, failure to pay all
11 overtime and double time wages owed and failure to pay them at the appropriate premium rates,
12 and failure to pay premium wages for unprovided or otherwise unlawful meal and rest breaks, or
13 by miscalculating any overtime or meal period or rest break premium wages and by the systematic
14 and unlawful deductions Defendants took from Employee wages. Defendants have also made it
15 difficult to account with precision for the unlawfully withheld wages and meal and rest period
16 compensation owed to Plaintiff and the Class, during the liability period, including because they
17 did not calculate the regular rate of pay correctly when paying overtime or meal period premiums
18 and because they did not implement and preserve a record-keeping method as required for non-
19 exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable
20 California Wage Orders. Upon information and belief, time clock punches were not maintained or
21 were not accurately maintained for work shifts and meal periods. Defendants also failed to
22 accurately record and pay for all regular and overtime hours worked and submitted by Plaintiff
23 and the Class members, including by failing to pay all overtime hours at the correctly calculated
24 overtime premium rate.

25 34. Defendants also provided Plaintiff and the Class members with wage statements
26 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
27 For the same reasons as explained above, Plaintiff and the Class members were provided with
28 unlawful wage statements that failed to reflect all hours worked and failed to pay for all overtime

1 hours or failed to pay overtime wages at the correct overtime premium rate, and Defendants
2 miscalculated meal and rest break premiums, and sick time if and when they did pay them.
3 Defendants followed this unlawful policy and practice even though both Plaintiff and Defendants
4 were aware that Plaintiff and the Class members worked more total hours than were reflected on
5 the wage statements, including overtime hours, and were underpaid by regular rate miscalculation.
6 Plaintiff and the Employees in the Class were unable to discern from their wage statements alone
7 the actual hours they worked in total during a pay period and the rates they were paid for those
8 hours worked.

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

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

27 37. 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 without
2 reimbursement. These included the cell phone-related expenses Plaintiff incurred in responding to
3 calls from management. Plaintiff and the Class members must be reimbursed for these necessary
4 business expenses under Labor Code § 2802, and Defendants systematically failed to do so.

5 38. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
6 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4,
7 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,
8 1194.2 1197, 1198, 1198.5, 1199, 2698 *et seq.*, 2802, 2810.5, and California Code of Regulations,
9 Title 8, section 11000 *et seq.*

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

14 **CLASS ALLEGATIONS**

15 40. Plaintiff brings this class action on behalf of herself and all others similarly situated
16 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the Class” or
17 “Class members”) defined as follows: “All individuals employed by Defendants at any time
18 during the period of four (4) years prior to the filing of this lawsuit and ending on a date as
19 determined by the Court (“the Class Period”), and who have been employed as non-exempt,
20 hourly employees within the State of California.” This includes phlebotomists, clerical workers,
21 nurses, and in similar and related positions in connection with blood donation and collection and
22 processing services provided at Defendants facilities and to Defendants’ customers throughout
23 California. Further, Plaintiff seeks to represent the Subclasses composed of and defined as
24 follows:

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

27 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
28 compensated for all hours worked for Defendants at the required rates of pay, including for all

hours worked in excess of eight in a day and/or forty in a week.

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

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

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

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

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

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

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

j. Subclass 10. Failure to Maintain Reasonable Temperature Subclass: All Class members who, within the applicable limitations period, were required by Defendants to work in areas with temperatures that were not maintained to provide reasonable comfort consistent with applicable standards.

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

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

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

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

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

25 **A. Numerosity**

26 44. The potential members of the Class as defined are so numerous that joinder of all
27 the Class members is impracticable. While the precise number of Class member has not been
28 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the

time period relevant to this lawsuit employed, at least over one hundred Employees who satisfy the Class definition within the State of California. Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all Class members.

B. Commonality

45. 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 paid reporting time pay under the applicable wage order and CCR § 11050(5);
- e. 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;
- f. 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;
- g. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements and wage statements that omitted many of the Section 226(a) requirements.
- h. Whether Defendants violated Labor Code § 221;
- i. 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;

- j. Whether Defendants' conduct was willful;
- k. Whether Defendants violated Labor Code § 226 and § 1174 and §1198 and the IWC Wage Orders by failing to maintain accurate records of Class members' earned wages and work periods;
- l. 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;
- m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;
- n. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business expenses incurred by Employees;
- o. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not providing employees with all required sick days and COVID-19 supplemental sick leave;
- p. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- q. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- r. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

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

D. Adequacy of Representation

47. 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

1 experienced and competent in litigating employment class actions.

2 **E. Superiority of Class Action**

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

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

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

26 51. Defendants, as prospective and actual employers of the Employees in the Class,
27 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
28 Defendants' pay practices, policies and working conditions imposed upon the similarly situated

1 Employees as well as the effect of any alleged arbitration agreements that may have been forced
2 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
3 and policies, most notably intentionally refusing to pay for all hours actually worked which should
4 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
5 agreements and policies and practices on the Employees and Class as a whole.

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

13 **FIRST CAUSE OF ACTION**
14 **FAILURE TO PAY MINIMUM WAGES**
15 **(Against All Defendants)**

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

18 54. Defendants failed to pay Employees minimum wages for all hours worked.
19 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
20 would work hours and not receive wages, including as alleged above in connection with off the
21 clock work, including all the time required to remain on duty and under Defendants' control
22 during breaks and due to the work demands placed upon them by Defendants' management and
23 by paying what should have been overtime hours as regular hours. Defendants' uniformly applied
24 policies required systematic off the clock work and underpayment of all wages owed to
25 Employees over a period of time, while benefiting Defendants. During the relevant time period,
26 Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class members,
27 including by requiring systematic off the clock work. To the extent any local wage ordinances
28 were also applicable to paying the employees an hourly rate above the minimum wage rate,

1 Defendants failed to comply with the local wage ordinances. Defendants' uniform pattern of
2 unlawful wage and hour practices manifested, without limitation, applicable to the Class as a
3 whole, as a result of implementing a uniform policy and practice that denied accurate
4 compensation to Plaintiff and the other members of the Class as to minimum wage pay.

5 55. In California, employees must be paid at least the applicable state minimum wage
6 for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and
7 paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Also, pursuant to
8 California Labor Code § 204, other applicable laws and regulations, and public policy, an
9 employer must timely pay its employees for all hours worked. Defendants failed to do so.

10 56. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
11 states: "The minimum wage for employees fixed by the commission is the minimum wage to be
12 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The
13 applicable minimum wage rate fixed by the commission for work during the relevant period is
14 found in the Wage Orders.

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

21 58. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
22 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
23 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
24 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
25 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
26 the absence of a contractually agreed upon one.

27 59. In committing these violations of the California Labor Code, Defendants
28 inaccurately recorded, or required Plaintiff and the Class members to input times that did not

1 reflect their actual hours worked, or miscalculated hours or rates or otherwise underpaid the actual
2 time worked by Plaintiff and other members of the Class, including by requiring off the clock
3 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of
4 all earned wages, and other benefits in violation of the California Labor Code, the Industrial
5 Welfare Commission requirements and other applicable laws and regulations. As a result of these
6 violations, Defendants also failed to timely pay all wages earned in accordance with California
7 Labor Code § 1194.

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

12 61. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
13 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
14 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
15 pay each employee minimum wages.

16 62. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
17 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
18 interest thereon.

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

22 64. Plaintiff and the Class members are entitled to recover the unpaid minimum wages
23 (including double minimum wages) and local wage ordinance wages and liquidated damages in an
24 amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s
25 fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other
26 members of the Class further request recovery of all unpaid wages, according to proof, interest,
27 statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as
28 provided by the California Labor Code and/or other applicable statutes. To the extent minimum

1 wage compensation is determined to be owed to the Class members who have terminated their
2 employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore
3 these individuals are also be entitled to waiting time penalties under California Labor Code § 203,
4 which penalties are sought herein on behalf of these Class members. Defendants' failure to timely
5 pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code §
6 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as
7 alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Class
8 members are entitled to seek and recover statutory costs.

9 **SECOND CAUSE OF ACTION**

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

11 **(Against All Defendants)**

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

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

20 67. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
21 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
22 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular
23 hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40)
24 hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any
25 one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12)
26 hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of
27 work in a workweek.

1 68. Defendants had a consistent policy of not paying Employees wages for all hours
2 worked, including by requiring off the clock work as addressed above, by unlawful deductions, by
3 under-reporting actual hours worked, and by requiring Employees to do so as well. Defendants
4 have also failed to include all forms of remuneration in the regular rate of pay used to calculate
5 and pay overtime, and failed to begin paying overtime when it was incurred due to the off the
6 clock work, as detailed above.

7 69. Defendants thus had a consistent policy of not paying Employees wages for all
8 hours worked, including hours at their required regular, overtime, and double-time rates.
9 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted
10 and/or modified certain employees' hours, including Plaintiff's, or required Plaintiff and the Class
11 members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and the
12 Class members all earned and owed straight time and overtime wages and other benefits, in
13 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
14 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
15 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt
16 employees to work through meal periods or remain under Defendants' control when they were
17 required to be clocked out or to otherwise work off the clock to complete their daily job duties and
18 respond to demands from customers and managers.

19 70. Therefore, Employees were not properly compensated, nor were they paid overtime
20 rates for hours worked in excess of eight hours in a given day, and/or forty hours in a given week.
21 Based on information and belief, Defendants did not make available to Employees a reasonable
22 protocol for correcting time records when Employees worked overtime hours or to fix incorrect
23 time entries or those that Defendants unlawfully under-recorded to the Employee's detriment.
24 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated
25 Class members to work through meal periods when they were required to be clocked out or to
26 otherwise work off the clock to complete their daily job duties.

27 71. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
28 regular wages owed and overtime compensation for all hours worked, as required by California

1 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
2 IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly calculate the
3 regular rate used to calculate and pay overtime, and meal and rest premiums, as addressed above.

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

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

23 74. Employees have been damaged by these violations of California Labor Code §§
24 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
25 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
26 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
27 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
28 minimum fixed by an order of the commission” or “violates...any provision of this chapter or

any order or ruling of the commission.”

75. Consequently, pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 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 for all their hours worked, 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.

THIRD CAUSE OF ACTION

MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

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

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

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

80. Moreover, Defendants failed to compensate Employees for each meal period not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. As detailed above, on the occasions when Defendants did pay any meal period premiums, they upon information and belief underpaid them by miscalculating the regular rate of compensation by not including all forms of remuneration in it. Defendants thus failed to compensate the Employees in the Class for each meal period not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order.

81. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, a sum to be proven at trial, 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 and other statutes and applicable IWC Wage Order paragraphs.

FOURTH CAUSE OF ACTION

REST-BREAK PERIOD LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

83. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that employers must authorize and permit all employees to take rest periods at the rate of

1 ten minutes net rest time per four (4) work hours.

2 84. Employees consistently worked consecutive four hour shifts and were generally
3 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
4 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
5 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
6 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
7 breaks of not less than ten minutes for each consecutive four hour shifts. Defendants made no
8 effort to authorize and permit Plaintiff and the Class members to take lawful rest and recovery
9 breaks. Employees were often required to work or to otherwise remain under Defendants' control
10 during rest and recovery periods, including by responding to work requirements, and had breaks
11 provided untimely as a result of the above described off the clock work.

12 85. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage
13 Orders provide that if an employer fails to provide an employee rest and recovery period in
14 accordance with this section, the employer shall pay the employee one hour of pay at the
15 employee's regular rate of compensation for each workday that the rest period is not provided.
16 Defendants failed to do so.

17 86. Defendants, and each of them, have therefore intentionally and improperly denied
18 rest and recovery periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7
19 and 512 and paragraph 12 of the applicable IWC Wage Orders.

20 87. Defendants failed to authorize and permit Plaintiff and the Class members to take
21 rest and recovery periods, as required by the Labor Code. Moreover, Defendants did not
22 compensate Employees with an additional hour of pay at each Employee's hourly rate for each
23 day that Defendants failed to provide them with adequate rest breaks, as required under Labor
24 Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders. To the extent
25 Defendants paid any rest break premiums, they upon information and belief, underpaid them by
26 miscalculating the regular rate of compensation by not including all forms of remuneration in it.
27 Defendants thus failed to compensate the Employees in the Class for each rest period not provided
28 or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the

1 applicable IWC Wage Order.

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

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

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

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

19 91. Defendants failed to provide Plaintiff and the similarly situated Employee Class
20 members with accurate itemized wage statements in writing, as required by the Labor Code and
21 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to
22 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
23 including for all overtime and double time hours worked and for deficient meal periods and rest
24 breaks, all of which Defendants knew or reasonably should have known were owed to the
25 Employees, as alleged above.

26 92. Throughout the liability period, Defendants intentionally failed to furnish to
27 Plaintiff and the Class members, upon each payment of wages, itemized statements accurately
28 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-

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

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

26 94. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
27 are required "to pay each employee, on the established payday for the period involved, not less
28 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 § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders.

95. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the Class 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.

96. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable IWC Wage Order, Plaintiff and the Employee Class members 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) under Section 226(e). They are also entitled to an award of costs and reasonable attorneys’ fees.

SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 221
(Against All Defendants)

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

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

99. Defendants unlawfully received and/or collected wages from the Employees in the Class by requiring off the clock work, by miscalculating overtime, and by not paying one hour of pay at the regular rate of compensation for every meal and rest period violation endured by Plaintiff and the other Class members, as alleged above. By not compensating Employees for all hours worked and meal and rest period premiums, Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

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

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

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

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

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

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

15 105. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
16 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
17 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
18 pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
19 applicable IWC Wage Orders.

20 **EIGHTH CAUSE OF ACTION**
21 **VIOLATION OF LABOR CODE § 203**
22 **(Against All Defendants)**

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

25 107. Plaintiff and numerous Class members are no longer employed by Defendants; they
26 either quit Defendants’ employ or were fired therefrom.

27 108. Defendants failed to pay these Employees all wages due and certain at the time of
28 termination or within seventy-two hours of resignation.

1 109. The wages withheld from these Employees by Defendants remained due and owing
2 for more than thirty days from the date of separation from employment. Additionally, Defendants
3 failed to pay Plaintiff her final check at the time of her termination.

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

11 111. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
12 are required "to pay each employee, on the established payday for the period involved, not less
13 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
14 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
15 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members
16 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
17 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
18 IWC Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and
19 Defendants are subject to a fine of not less than \$100 for causing Employees "to work for longer
20 hours than those fixed, or under conditions of labor prohibited by an order of the commission" or
21 if the employer pays "a wage less than the minimum fixed by an order of the commission" or
22 "violates...any provision of this chapter or any order or ruling of the commission."

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

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1 **NINTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

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

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

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

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

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

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1 **TENTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

6 121. Plaintiff is informed and believes and based thereon alleges that throughout the
7 period applicable, Defendants required Plaintiff and the Class members to pay for necessary work
8 related expenses they incurred. Defendants required Plaintiff and the Class members to use their
9 cellular phones to conduct work-related business. Plaintiff and the Class members must be
10 reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants
11 systematically failed to do so.

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

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

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

1 **ELEVENTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

4 125. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
5 in full herein. Plaintiff, on behalf of herself, the Employees in the Class, and the general public,
6 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
7 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
8 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
9 the public interest within the meaning of Code of Civil Procedure § 1021.5.

10 126. Plaintiff is a “person” within the meaning of Business & Professions Code
11 § 17204, has suffered injury, and therefore has standing to bring this cause of action for
12 injunctive relief, restitution, and other appropriate equitable relief.

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

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

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

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

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

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

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

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

TWELFTH CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.*
(Against All Defendants)

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

136. Plaintiff and the Employees in the Class are also aggrieved employees as defined under Labor Code § 2699(c)(1) in that they suffered the violations alleged in this Complaint and either were or are employed by Defendants (“Aggrieved Employees”) during the relevant time period.

137. In failing to pay Aggrieved Employees minimum wages and overtime, 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.

138. As such, Employees seek wages and 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, 218, 218.5, 218.6, 221, 226, 226.4, 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2698 *et seq.*, 2802, and 2810.5.

139. More specifically, after complying with the notice procedures of Labor Code § 2699.3, Plaintiff asserts, 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, including as follows:

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

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

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

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

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

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

6 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
7 Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the
8 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
9 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
10 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
11 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs
12 pursuant to Labor Code § 2699(k)(1);

13 (f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For
14 Defendants' failure to provide Employees with all their required and earned sick days and all their
15 COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil
16 and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5,
17 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to
18 Labor Code § 2699(g)(1); and

19 (g) All Alleged Violations of the IWC Wage Orders and Other Labor Code
20 Sections: For any above addressed violation of the applicable provisions of the IWC Wage
21 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §
22 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and
23 paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to
24 Labor Code § 2699(k)(1).

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

27 (a) Any employer or other person acting on behalf of an employer who violates, or
28 causes to be violated, a section of this chapter or any provision regulating hours and days of work

1 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1)
2 For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
3 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
4 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
5 each pay period for which the employee was underpaid in addition to an amount sufficient to
6 recover underpaid wages...

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

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

15 141. Plaintiff has exhausted her administrative remedies by submitting a certified letter
16 to the LWDA and Defendants on June 24, 2024 (LWDA-CM-1036097-24) addressing in detail the
17 specific provisions of the Labor Code Defendants have violated and addressing the facts and legal
18 theories to support the alleged violations and requested penalties. The LWDA has not provided
19 notice of its intent to investigate the alleged violations within 65 calendar days of the postmark
20 date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations
21 addressed herein and in the PAGA Notice letter and the original Complaint.

22 **RELIEF REQUESTED**

23 WHEREFORE, Plaintiff prays for the following relief:

- 24 1. For an order certifying this action as a class action;
25 2. For compensatory damages in the amount of the unpaid minimum wages for work
26 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
27 the filing of this action, as may be proven;
28

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;
8. For restitution and/or damages and penalties for Defendants' failure to pay all wages due twice monthly under Labor Code § 204, as may be proven;
9. For restitution and/or damages for all amounts unlawfully withheld from the wages for all class members in violation of Labor Code § 221, as may be proven;
10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
11. For penalties pursuant to Labor Code § 1174.5, as may be proven;
12. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;
13. For damages and restitution for failure to reimburse all reasonable and necessary business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;
14. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;
15. For penalties pursuant to Labor Code § 2698, *et seq.*, as may be proven;
16. For penalties under Labor Code § 558, as may be proven;
17. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or

1 duties adumbrated in this Complaint;

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

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

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

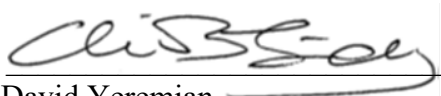
5 21. For an award providing for the payment of the costs of this suit;

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

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

8
9 DATED: August 27, 2024

D.LAW, INC.

10 By 
11 David Yeremian
12 Alvin B. Lindsay
13 Jean Hopkins Power
14 Attorneys for Plaintiff Gloria A. Amescua
15 and the putative class
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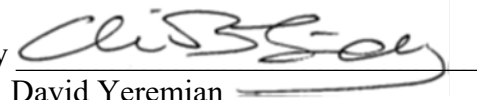
DEMAND FOR JURY TRIAL

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

DATED: August 27, 2024

D.LAW, INC.

By



David Yermian
Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Plaintiff Gloria A. Amescua
and the putative class

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

Paul J. Bauer
paul@sw2law.com
SAGASER, WATKINS & WIELAND, PC
 5260 North Palm Avenue, Suite 400
 Fresno, California 93704

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

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

California.



Sasha Zambrano