

D.LAW, INC.

Emil Davtyan (SBN 299363)

Emil@d.law

David Yeremian (SBN 226337)

d.yeremian@d.law

Alvin B. Lindsay (SBN 220236)

a.lindsay@d.law

Melissa Rodriguez (SBN 352716)

m.rodriguez@d.law

880 E Broadway

Glendale, CA 91205

Telephone: (818) 962-6465

Fax: (818) 962-6469

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
8/8/2024 5:04 PM
By: Leslie Zepeda, DEPUTY

Attorneys for Plaintiff YVETTE RENEE REYES, on behalf
of herself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

YVETTE RENEE REYES, an individual, on
behalf of herself and others similarly situated,

Plaintiff,

vs.

MITSUBISHI CEMENT CORPORATION,
a Delaware stock corporation; INDUSTRIAL
CLERICAL RECRUITERS, INC., a
California stock corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CIVSB2418571

CLASS ACTION

Assigned for All Purposes To:

Hon. Stephanie Thornton-Harris

Dept.: S31 - SBJC

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
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;
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 Produce Requested Records, Labor Code §§ 226 And 1198;
11. Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802;
12. Violation of Business & Professions Code § 17200 *et seq.*, and
13. Penalties under PAGA Labor Code § 2698

DEMAND FOR JURY TRIAL

Original Complaint Filed: June 4, 2024

Trial Date: None Set

1 Plaintiff YVETTE RENEE REYES (hereinafter “Plaintiff”), on behalf of herself and other
2 similarly situated non-exempt, hourly employees employed by Defendants within the state of
3 California during the relevant time period (collectively, “Employees”; individually, “Employee”),
4 complains of Defendants, and each of them, 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 from four years prior to the filing of
8 this lawsuit, are or were employed by Defendants as non-exempt, hourly clean-up crew members
9 and in similar and in similar and related positions by Defendants MITSUBISHI CEMENT
10 CORPORATION, Delaware stock corporation; INDUSTRIAL CLERICAL RECRUITERS, INC.,
11 a California stock corporation; and DOES 1 through 50, inclusive (all defendants being
12 collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each of
13 them, violated various provisions of the California Labor Code, relevant orders of the Industrial
14 Welfare Commission (“IWC”), and the California Business & Professions Code, and seeks redress
15 for these violations.

16 2. Plaintiff and the Class Members worked as hourly, non-exempt Employees for
17 Defendants in positions generally pertaining to providing cleaning and cement manufacturing
18 services to Defendants customers. Plaintiff, and upon information and belief the other similarly
19 situated Employees in the Class, were required to perform work tasks based out of Defendants’
20 sites and facilities in California. Plaintiff was employed by Defendants as a clean-up crew
21 member, and Defendants tasked her with duties that included providing cleaning services.

22 3. Defendants employed other similarly situated Employees in similar and related
23 positions based out of Defendants’ sites and facilities in California, including in the cities of Long
24 Beach, Corona, and Lucerne Valley, where Plaintiff worked. Plaintiff and the other similarly
25 situated Class Members worked at Defendants’ behest without being paid all wages due and
26 without being provided all required breaks. More specifically, Plaintiff and the other similarly
27 situated Class Members were employed by Defendants and shared similar job duties and
28 responsibilities, were subjected to the same policies and practices, and endured similar violations

1 at Defendants' hands.

2 4. Defendants required Plaintiff and the Employees in the Class to work off the clock
3 and failed to accurately record the hours they were on the clock, failed to pay them at the
4 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
5 resignation, and failed to provide Plaintiff and Class Members with accurate itemized wage
6 statements that prevented them from learning of these unlawful pay practices. Defendants also
7 failed to provide Plaintiff and the Class with lawful meal and rest periods, as Employees were
8 required to remain under Defendants' control and were not provided with the opportunity to take
9 full uninterrupted and duty-free rest periods and meal breaks, as required by the Labor Code and
10 the applicable paragraphs of the IWC Wage Orders.

11 5. Defendant MITSUBISHI CEMENT CORPORATION is a Delaware corporation
12 that lists its principal address in Henderson, Nevada and does not list a California office with the
13 California Secretary of State. It lists several registered corporate agents who list addresses in
14 Glendale, California, and in Los Angeles County. Mitsubishi Cement Corporation ("Mitsubishi")
15 lists its type of business as "cement manufacturing." Plaintiff and the similarly situated Class
16 members were jointly employed by Defendants and placed at Mitsubishi's jobsite location in
17 Lucerne Valley, and were subjected to uniformly applied policies and practices and hours and
18 working conditions as dictated by Mitsubishi for both the Employees it hires directly and those
19 who are placed at Mitsubishi's job site locations in California.

20 6. Defendant INDUSTRIAL CLERICAL RECRUITERS, INC. is a California
21 corporation that lists its principal and California office address in Victorville, California with the
22 California Secretary of State and lists its type of business as "Employment Development." Upon
23 information and belief, Industrial Clerical Recruiters, Inc. is a temporary staffing company that
24 places and jointly employs workers at Mitsubishi Cement Corporation locations, including
25 Plaintiff. The wage statements issued to Plaintiff list "Industrial Clerical Recruiters, Inc." as
26 Plaintiff's employer, with the same Victorville address.

27 7. Therefore, under California Labor Code § 2810.3, Mitsubishi shares with Industrial
28 Clerical Recruiters, Inc., and any other staffing agency it uses, in civil legal responsibility for all

workers supplied to Mitsubishi for their collective failure to pay all earned wages. California Labor Code § 2810.3 requires that “A client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for...the payment of wages.” A “labor contractor” (here, Industrial Clerical Recruiters, Inc.), is defined as “an individual or entity that supplies, either with or without a contract, a client employer with workers to perform labor within the client employer’s usual course of business.” “Client employer” (here Mitsubishi) is defined as “a business entity, regardless of its form, that obtains or is provided workers to perform labor within its usual course of business from a labor contractor.” Upon information and belief, Defendant Mitsubishi is and has been a client employer within the definition of Labor Code § 2810.3 and shares with Industrial Clerical Recruiters, Inc., the labor contractor, all civil legal responsibility and civil liability for failure to pay all wages earned by Plaintiff and the Class Members.

8. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and liabilities giving rise to this lawsuit occurred, at least in part in San Bernardino County and Defendants have not listed a principal California address. Defendants also employ Class Members at sites and facilities in San Bernardino County and throughout California.

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

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

FACTUAL BACKGROUND

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

12. During the course of Plaintiff and the Class Members' employment with Defendants, they were not paid all wages they were owed, including for all work performed (resulting in "off the clock" work) and for all their overtime hours worked, and they were not paid at the required rates for overtime. This has resulted in systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders. Upon information and belief,

1 Defendants employ other non-exempt, hourly employees as clean-up crew and in similar and
2 related positions based out of their jobsites and facilities in California.

3 13. Plaintiff was generally scheduled to work five to six days per week for eight to
4 nine hours per shift, with shift times generally spanning from 7:30 a.m. through 3:30 p.m.
5 However, Plaintiff was required by Defendants to endure substantial off-the-clock work before
6 and after her scheduled shift hours.

7 14. Defendants' policy and practice of requiring systematic off-the-clock work flowed
8 in part from their unlawful timekeeping procedures. Defendants required timekeeping entries to
9 be written down on paper timesheets by Employees rather than tracking hours through a time
10 clock or some other method of recording actual times worked. While Defendants required time
11 punch records for shift start and end times and meal period beginning and end times, they were
12 not recorded contemporaneously, and instead, Defendants merely required them to be entered by
13 the end of every shift. Plaintiff was therefore compelled to record scheduled shift times worked
14 rather than actual times when she was on and off the clock, and was concerned about the
15 consequences if she were to record all the hours she actually worked.

16 15. Defendants also required Plaintiff and Class Members to be ready to work at their
17 scheduled shift start time, and Plaintiff would be reprimanded if she was not. However, for
18 Plaintiff to do so she had to arrive at the jobsite well before that scheduled start time. Plaintiff's
19 work shifts generally were scheduled to start at 7:00 a.m., and to be prepared to start working by
20 then she had to arrive at the jobsite at least 30 minutes prior so she could park, walk about 1/4th
21 of a mile to the break room, don and doff her work clothes, steel-toed boots, and protective gear,
22 and make her way to the main break room for her morning meeting. Defendants' timekeeping
23 procedures failed to take into account these pre-shift work activities and instead required that
24 Plaintiff record her scheduled hours. Upon information and belief, the other Class members
25 endured similar failure to pay for all hours worked violations as did Plaintiff.

26 16. Additionally, Defendants instructed Plaintiff and the Class Members to input into
27 the timekeeping system that they took thirty minutes for a meal period and did so before the fifth
28 hour of work as required under the Labor Code and Wage Orders. As addressed above, the pre-

1 shift off-the-clock work was affected when Plaintiff and Class Members were required to take
2 their meal periods. Defendants instructed Plaintiff and the Class Members to thus record
3 compliant meal breaks without regard to whether they were actually taken on time. Additionally,
4 by deducting 30 minutes for a meal period, Defendants effectively and unlawfully deducted at
5 least 30 minutes of hours worked from each Employee's daily work shifts. Managers would again
6 require that Plaintiff and Class Members record compliant meal periods to reflect they were
7 timely or not shortened to avoid incurring and paying meal period premium penalty wages.

8 17. Defendants' managers also contacted Plaintiff by calling her personal cell phone
9 regarding work-related matters and would do so both throughout the work day and also after
10 work hours. Additional off-the-clock work occurred in the form of the unlawful deduction of 30
11 minutes of hours worked for an alleged thirty-minute meal period that was provided generally
12 untimely.

13 18. Overtime hours were generally not allowed, and to avoid paying overtime hours,
14 Defendants required Plaintiff to have her timesheets reflect her scheduled hours and complaint
15 meal periods rather than have her record her actual hours worked. Additionally, to whatever
16 extent Defendants paid performance-based bonuses and shift differentials and any other form of
17 remuneration to Employees in the Class, Defendants failed to include these amounts in the
18 regular rate used to calculate and pay the overtime that Defendants did pay.

19 19. Plaintiff was therefore not paid for all her hours worked at the required minimum,
20 overtime, and double time wage rates due to Defendants' uniformly applied and unlawful policy
21 and practice of requiring her to work off the clock and without pay. Defendants systematically
22 underpaid Plaintiff and the Class Members by failing to pay them at the required overtime rates
23 for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a
24 day at the required double time rate. Upon information and belief, the Class Members were bound
25 by similar scheduling and timekeeping policies and endured similar violations at Defendants'
26 hands as Plaintiff.

27 20. Defendants have either failed to maintain timekeeping records for Plaintiff that
28 would permit Plaintiff to discover the nature and extent of the off-the-clock work Defendants

1 required and the actual hours Plaintiff worked or the breaks she received or have otherwise
2 declined to produce them to Plaintiff in response to a timely and lawful records request. By
3 failing to pay for all hours worked, and by under-recording regular hours to the detriment of the
4 Class Members, Defendants have committed knowing and intentional ongoing violations of the
5 record-keeping requirements under the Labor Code, including section 1174, by either failing to
6 maintain records or retaining inaccurate ones.

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

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

24 23. Defendants also failed to provide Plaintiff and the Class Members with their
25 required meal periods and the at least two ten-minute rest breaks as required at a minimum for
26 Plaintiff's scheduled shift durations. The above-described off-the-clock work contributed to
27 Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Class
28 Members, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s).

1 Defendants similarly failed to authorize and permit Plaintiff and the employee Class Members to
2 take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the
3 IWC Wage Order(s).

4 24. More specifically, Plaintiff worked shifts that entitled her to at least one meal
5 period. Defendants instructed Plaintiff and the Class Members to input into the timekeeping
6 system that they took thirty minutes for a meal period and did so before the fifth hour of work as
7 required under the Labor Code and Wage Orders, but as addressed above, the pre-shift off-the-
8 clock work affected when Plaintiff and Class Members were required to take their meal periods.
9 Defendants thus instructed Plaintiff and the Class Members to record compliant meal breaks
10 without regard to whether they were actually taken on time. Defendants automatically deducted a
11 30-minute meal period on each work shift without regard to whether it was actually taken or was
12 otherwise unlawful.

13 25. Therefore, meal period violations systematically occurred ongoing throughout all
14 of Plaintiff's work shifts where Defendants both failed to provide a lawful meal period or penalty
15 payment and then also unlawfully deducted 30 minutes from Plaintiff's hours worked for the day.
16 To the extent Defendants ever did pay Plaintiff a meal period premium, they upon information and
17 belief failed to include all forms of remuneration beyond hourly wages in the regular hourly rate
18 used to pay the one-hour premium payment. Upon information and belief, the other Class
19 Members were subjected to similar unlawful policies and practices and endured similar violations
20 as Plaintiff.

21 26. Defendants thus failed to provide all the legally required unpaid, off-duty meal
22 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
23 Members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
24 Members were required to perform work as ordered by Defendants for more than five hours
25 during a shift without receiving compliant meal periods.

26 27. Upon information and belief, Defendants' systems did not automatically generate a
27 meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours
28 into a work shift or in the event the time punch records reflected a meal period of less than thirty

1 minutes. However, upon information and belief, in the event Defendants did pay any meal period
2 premiums, they did so at the employee's customary regular rate of hourly compensation without
3 including all forms of remuneration in that hourly rate calculation, for example by omitting
4 performance-based bonuses and the like from the rate at which meal premiums were paid.

5 28. Defendants thus followed uniformly applied policies of not providing all required
6 meal periods to their Employees. Additionally, as addressed above, Defendants followed a
7 practice of requiring off-the-clock work in a manner that would impact when Employees were to
8 receive meal periods and rest breaks, thus leading to further violations.

9 29. As a result, Defendants' failure to provide Plaintiff and the Class Members with all
10 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
11 periods is and will be evidenced by Defendants' business records, or lack thereof. As further
12 detailed above, Defendants also failed to pay Employees "premium pay," i.e. one hour of wages at
13 each Employee's effective regular hourly rate of compensation for each meal period or rest break
14 that Defendants failed to provide or deficiently provided.

15 30. Therefore, for at least four years prior to the filing of this action and through to the
16 present, Plaintiff and the Class Members were unable to take off-duty breaks or were otherwise
17 not provided with the opportunity to take required breaks as required under the Labor Code and
18 Wage Orders due to Defendants' policies and practices. On the occasions when Plaintiff and the
19 Class Members were provided with a meal period, it was often untimely and Employees were not
20 provided with one hour's wages in lieu thereof. Meal period violations thus occurred in one or
21 more of the following manners:

- 22 (a) Class Members were not provided full thirty-minute duty free meal periods
23 for work days in excess of five hours and were not compensated one hour's
24 wages in lieu thereof, or were not compensated at the correct regular rate
25 of compensation, all in violation of, among others, Labor Code §§ 226.7,
26 512, and the applicable Industrial Welfare Commission Wage Order(s);
- 27 (b) Class Members were not provided second full thirty-minute duty free meal
28 periods for work days in excess of ten hours;

- 1 (c) Class Members were required to work through at least part of their daily
2 meal period(s);
- 3 (d) Meal periods were provided after five hours of continuous work during a
4 shift; and
- 5 (e) Class Members were restricted in their ability to take a full thirty-minute
6 meal period and were required to remain under Defendants' control.

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

16 32. During rest periods, employers must relieve employees of all duties and relinquish
17 control over how employees spend their time. However, Defendant's policies and procedures
18 prohibited Plaintiff and Class Members from leaving the premises during their rest breaks.
19 Plaintiff's supervisor would pick Plaintiff and Class Members up in a shuttle and drop them off at
20 the breakroom for their rest break, where they were required to stay during their rest breaks.

21 33. Plaintiff and the Class Members were and are under Defendants' control when
22 they are working through rest breaks and remaining restricted from using the time for their own
23 purposes when under Defendants' control. Defendants have also provided either impermissibly
24 shortened or untimely rest breaks to Plaintiff and the Class Members. Plaintiff and the Employees
25 in the Class were thus not authorized and permitted to take lawful rest periods and were not
26 provided with one hour's wages in lieu thereof. They were required to remain on-duty during
27 breaks of their breaks, thus making them either untimely or shortened and on-duty, and they were
28 also prevented from leaving the premises and otherwise remain under Defendants' control during

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

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

34. From at least four years prior to the filing of this lawsuit and continuing to the present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or deducting the Employees' earned wages, including by the above-described off-the-clock work and on-duty work while on unpaid meal breaks. In addition to failing to authorize and permit rest breaks, Defendants unlawfully deducted up to 30-minute meal periods that were often received without violation. Thus, by deducting 30 minutes for a meal that was generally not lawfully provided if at all, Defendants effectively and unlawfully deducted at least 30 minutes of hours worked from each Employee's daily work shifts. In order to avoid overtime, Defendants' managers required that Plaintiff record her scheduled hours rather than the actual hours worked. By not compensating Employees for all hours worked, Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

35. Defendants also violated California Labor Code § 246 by not providing all required paid sick days to Plaintiff and the Class Members. Labor Code § 246 provides that an Employee who "works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their required and earned sick days, in violation of Labor Code § 246. Additionally and upon

1 information and belief, Defendants have failed to provide COVID-19 supplemental sick leave to
2 the Class Members during the relevant time period, including by failing to provide two work
3 weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and
4 248.2 and including damages and penalties as these sections are enforced through Labor Code §
5 248.5, which requires that: “If paid sick days were unlawfully withheld, the dollar amount of paid
6 sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250),
7 whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars
8 (\$4,000), shall be included in the administrative penalty.” Plaintiff accordingly seeks this relief
9 available for Defendants’ failure to provide Employees with all their required and earned sick
10 days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1,
11 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246,
12 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees
13 and costs pursuant to Labor Code § 2699(g)(1).

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

26 37. As a result of these illegal policies and practices, Defendants also engaged in and
27 enforced the following additional unlawful practices and policies against Plaintiff and the Class
28 Members she seeks to represent:

- 1 (a) failing to pay all wages owed to Class Members who either were discharged,
2 laid off, or resigned in accordance with the requirements of Labor Code §§
3 201, 202, 203;
- 4 (b) failing to pay all wages owed to the Class Members twice monthly in
5 accordance with the requirements of Labor Code § 204;
- 6 (c) failing to pay Class Members all wages owed, including all meal and rest
7 period premium wages, and failing to pay them at the regular rate of
8 compensation;
- 9 (d) failing to maintain accurate records of Class Members' hours worked and
10 earned wages and meal periods in violation of Labor Code §§ 226 and
11 1174(d) and section 7 of the applicable IWC Wage Orders; and

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

1 calculated overtime premium rate.

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

13 40. Defendants also required Plaintiff and the Class Members to work hours off the
14 clock for which they were not compensated. They were required to endure off-the-clock work
15 addressed above and were not provided with sick pay and supplemental sick leave and were
16 subjected to systematic off-the-clock work. Defendants also failed to pay all overtime premium
17 wages owed for work conducted on a work shift and a workday or failed to pay it at the correct
18 rate, as addressed above. Therefore, Defendants have also followed a uniform and consistent
19 policy of failing to pay all wages owed to Plaintiff and other similarly situated Employees at the
20 time of their termination or within seventy-two hours of their resignation, as required by
21 California wage-and-hour laws, including Labor Code § 203.

22 41. In view of the above addressed violations, Defendants have also failed to pay all
23 wages owed to Plaintiff and the Class members twice monthly in accordance with the
24 requirements of Labor Code § 204. Additionally, upon information and belief, Defendant
25 Mitsubishi Cement Corporation is and has been a client employer within the definition of Labor
26 Code § 2810.3. Therefore, Industrial Clerical Recruiters, Inc., as the labor contractors, must share
27 all civil legal responsibility and civil liability for the payment of all wages earned by Plaintiff and
28 the Class Members with Mitsubishi Cement Corporation.

1 42. Additionally, from at least four years prior to the filing of this lawsuit and
2 continuing to the present, Defendants have regularly required Plaintiff and the Class Members to
3 incur necessary business expenses in the course of performing their required job duties without
4 reimbursement. These included the cell phone-related expenses Plaintiff incurred in responding to
5 calls and messages from managers. Additionally, when Plaintiff's employment was terminated,
6 Defendants prohibited her from gathering and retrieving her personal belongings, such as her \$300
7 steel-toed boots, perfume, deodorant, Chapstick, and other personal items, from the break room.
8 Upon information and belief, Class Members were subject to similar practices upon separation
9 from employment. Plaintiff and the Class Members must be reimbursed for these necessary
10 business expenses under Labor Code § 2802 and Defendants systematically failed to do so.

11 43. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
12 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4,
13 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,
14 1194.2 1197, 1198, 1198.5, 1199, 2802, 2698 *et seq.*, and California Code of Regulations, Title 8,
15 section 11000 *et seq.*

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

20 **CLASS ALLEGATIONS**

21 45. Plaintiff brings this class action on behalf of herself and all others similarly situated
22 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (often referred to as
23 "the Class" or "Class Members") defined as follows: "All individuals employed by Defendants at
24 any time during the period of four (4) years prior to the filing of this lawsuit and ending on a date
25 as determined by the Court ("the Class Period"), and who have been employed as non-exempt,
26 hourly employees placed at or otherwise based out of Defendant Mitsubishi Cement Corporation's
27 jobsite and facilities within the State of California. This includes those hired through Industrial
28 Clerical Recruiters, Inc. and other temporary staffing agencies, and includes all types of cleaning

1 crew members and those employed by Defendants in similar and related positions. Further,
2 Plaintiff seeks to represent the Subclasses composed of and defined as follows:

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

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

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

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

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

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

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

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

27 i. Subclass 9. Failure To Produce Requested Employment Records Subclass. All
28 Class Members who, within the applicable limitations period, were denied the right to inspect and

1 receive all their payroll records, timecards, and personnel records.

2 j. Subclass 10. Payroll Records Subclass. All Class Members who were subject to
3 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
4 by California wage-and-hour laws.

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

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

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

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

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

28

1 **A. Numerosity**

2 49. The potential members of the class as defined are so numerous that joinder of all
3 the member of the class is impracticable. While the precise number of Class Member has not been
4 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
5 time period relevant to this lawsuit employed, at least over one hundred Employees who satisfy
6 the Class definition within the State of California. Plaintiff alleges that Defendants' employment
7 records will provide information as to the number and location of all Class Members.

8 **B. Commonality**

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

- 15 a. Whether Defendants failed to pay Employees minimum wages;
- 16 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 17 c. Whether Defendants failed to pay Employees overtime as required under Labor
18 Code § 510;
- 19 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
20 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
21 premium pay in lieu thereof;
- 22 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
23 Orders, by failing to authorize and permit Employees to take requisite rest breaks
24 or provide premium pay in lieu thereof;
- 25 f. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not
26 providing employees with all required sick days and COVID-19 supplemental sick
27 leave;
- 28 g. Whether Defendants violated Labor Code § 226(a) by providing Employees with

inaccurate wage statements;

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 Business and Professions Code § 17200 *et seq.*; and

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

q. Whether Defendant Mitsubishi Cement Corporation should share with Industrial Clerical Recruiters, Inc. responsibility for all workers placed at and based out of Mitsubishi Cement Corporation's California facilities under Labor Code § 2810.3.

C. Typicality

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

1 **D. Adequacy of Representation**

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

5 **E. Superiority of Class Action**

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

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

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

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

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

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Against All Defendants)

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

59. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with off-the-clock work, including all the time required to remain on duty and under Defendants' control during breaks and due to the work demands placed upon them by Defendants' management and by the unlawful deduction of hours or by paying what should have been overtime hours as regular hours. Defendants' uniformly applied policies required systematic off-the-clock work and underpayment of all wages owed to Employees over a period of time, while benefiting

1 Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum
2 wages to Plaintiff and the Class Members, including by requiring systematic off-the-clock work.
3 To the extent any local wage ordinances were also applicable to paying the employees an hourly
4 rate above the minimum wage rate, Defendants failed to comply with the local wage ordinances.
5 Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation,
6 applicable to the Class as a whole, as a result of implementing a uniform policy and practice that
7 denied accurate compensation to Plaintiff and the other members of the Class as to minimum
8 wage pay.

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

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

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

25 63. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
26 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
27 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
28 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for

1 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
2 the absence of a contractually agreed upon one.

3 64. In committing these violations of the California Labor Code, Defendants
4 inaccurately recorded, or required Plaintiff and the Class Members to input times that did not
5 reflect their actual hours worked, or miscalculated hours or rates or otherwise underpaid the actual
6 time worked by Plaintiff and other members of the Class, including by requiring off the clock
7 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of
8 all earned wages, and other benefits in violation of the California Labor Code, the Industrial
9 Welfare Commission requirements and other applicable laws and regulations. As a result of these
10 violations, Defendants also failed to timely pay all wages earned in accordance with California
11 Labor Code § 1194.

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

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

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

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

26 69. Additionally, under California Labor Code § 2810.3, Mitsubishi shares with
27 Industrial Clerical Recruiters, Inc., and any other staffing agency it uses, in civil legal
28 responsibility for all workers supplied to Mitsubishi for their collective failure to pay all earned

1 wages. California Labor Code § 2810.3 requires that “A client employer shall share with a labor
2 contractor all civil legal responsibility and civil liability for all workers supplied by that labor
3 contractor for...the payment of wages.” A “labor contractor” (here, Industrial Clerical Recruiters,
4 Inc.), is defined as “an individual or entity that supplies, either with or without a contract, a client
5 employer with workers to perform labor within the client employer’s usual course of business.”
6 “Client employer” (here Mitsubishi) is defined as “a business entity, regardless of its form, that
7 obtains or is provided workers to perform labor within its usual course of business from a labor
8 contractor.” Upon information and belief, Defendant Mitsubishi is and has been a client employer
9 within the definition of Labor Code § 2810.3 and shares with Industrial Clerical Recruiters, Inc.,
10 the labor contractor, all civil legal responsibility and civil liability for failure to pay all wages
11 earned by Plaintiff and the Class Members. Mitsubishi also directly hires some Class members,
12 who are subject to similar policies and practices as those Employees placed with Mitsubishi by
13 temporary staffing agencies such as Industrial Clerical Recruiters, Inc.

14 70. Plaintiff and the Class Members are entitled to recover the unpaid minimum wages
15 (including double minimum wages) and local wage ordinance wages and liquidated damages in an
16 amount equal to the minimum wages unlawfully unpaid, interest thereon, and reasonable
17 attorney’s fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the
18 other members of the Class further request recovery of all unpaid wages, according to proof,
19 interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in
20 a sum as provided by the California Labor Code and/or other applicable statutes. To the extent
21 minimum wage compensation is determined to be owed to the Class Members who have
22 terminated their employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202,
23 and therefore these individuals are also be entitled to waiting time penalties under California
24 Labor Code § 203, which penalties are sought herein on behalf of these Class Members.
25 Defendants’ failure to timely pay all wages owed also violated Labor Code § 204 and resulted in
26 violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage
27 statements. Defendants’ conduct as alleged herein was willful, intentional, and not in good faith.
28 Further, Plaintiff and other Class Members are entitled to seek and recover statutory costs.

1 **SECOND CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

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

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

26 75. Defendants thus had a consistent policy of not paying Employees wages for all
27 hours worked, including hours at their required regular, overtime, and double-time rates.
28 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted

1 and/or, modified certain employees' hours, including Plaintiff's, or required Plaintiff and the Class
2 Members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and
3 the Class Members all earned and owed straight time and overtime wages and other benefits, in
4 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
5 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
6 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt
7 employees to work through meal periods or remain under Defendants' control when they were
8 required to be clocked out or to otherwise work off the clock to complete their daily job duties and
9 respond to demands from managers.

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

18 77. Defendants' failure to pay Plaintiff and the Class Members the unpaid balance of
19 regular wages owed and overtime compensation for all hours worked, as required by California
20 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
21 IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly calculate the
22 regular rate used to calculate and pay overtime, and meal and rest premiums, as addressed above.

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

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

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

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

21 81. Additionally, under California Labor Code § 2810.3, Mitsubishi shares with
22 Industrial Clerical Recruiters, Inc., and any other staffing agency it uses, in civil legal
23 responsibility for all workers supplied to Mitsubishi for their collective failure to pay all earned
24 wages. California Labor Code § 2810.3 requires that “A client employer shall share with a labor
25 contractor all civil legal responsibility and civil liability for all workers supplied by that labor
26 contractor for...the payment of wages.” A “labor contractor” (here, Industrial Clerical Recruiters,
27 Inc.), is defined as “an individual or entity that supplies, either with or without a contract, a client
28 employer with workers to perform labor within the client employer’s usual course of business.”

1 “Client employer” (here Mitsubishi) is defined as “a business entity, regardless of its form, that
2 obtains or is provided workers to perform labor within its usual course of business from a labor
3 contractor.” Upon information and belief, Defendant Mitsubishi is and has been a client employer
4 within the definition of Labor Code § 2810.3 and shares with Industrial Clerical Recruiters, Inc.,
5 the labor contractor, all civil legal responsibility and civil liability for failure to pay all wages
6 earned by Plaintiff and the Class Members. Mitsubishi also directly hires some Class members,
7 who are subject to similar policies and practices as those Employees jointly employed by
8 Defendants and placed with Mitsubishi by temporary staffing agencies such as Industrial Clerical
9 Recruiters, Inc.

10 82. Consequently, pursuant to the California Labor Code, including Labor Code §§
11 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
12 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
13 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
14 their reasonable attorneys’ fees and costs, as well as the assessment of any statutory penalties
15 against Defendants, and each of them, and any additional sums as provided by the Labor Code
16 and/or other statutes.

17 **THIRD CAUSE OF ACTION**

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

19 **(Against All Defendants)**

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

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

28 85. Defendants failed to provide Employees with meal periods as required under the

1 Labor Code and paragraph 11 of the applicable IWC Wage Order. Defendants provided them after
2 Employees worked beyond the fifth hour of their shifts. Furthermore, upon information and belief,
3 on the occasions when Employees worked more than ten hours in a given shift, the second thirty-
4 minute meal period was also received untimely as required by law.

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

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

20 88. Upon information and belief, Defendant Mitsubishi is and has been a client
21 employer within the definition of Labor Code § 2810.3 and shares with Industrial Clerical
22 Recruiters, Inc., the labor contractor, all civil legal responsibility and civil liability for failure to
23 pay all wages earned by Plaintiff and the Class Members, including the premium penalty wages
24 owed for Defendants' failure to provide meal periods.

25 89. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
26 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
27 to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or
28 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 LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

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

92. Employees consistently worked consecutive four-hour shifts and were generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for each consecutive four-hour shift, and Defendants failed to provide Employees with timely rest breaks of not less than ten minutes for each consecutive four-hour shift. Defendants made no effort to schedule or otherwise authorize and permit Plaintiff and the Class Members to take lawful rest breaks. Employees were often required to work or to otherwise remain under Defendants' control during rest periods, including by responding to work requirements, and had breaks provided untimely as a result of the above-described off-the-clock work. Plaintiff and the Class Members were also not permitted to leave their work premises during rest breaks.

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

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

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

96. Upon information and belief, Defendant Mitsubishi is and has been a client employer within the definition of Labor Code § 2810.3 and shares with Industrial Clerical Recruiters, Inc., the labor contractor, all civil legal responsibility and civil liability for failure to pay all wages earned by Plaintiff and the Class Members, including the premium penalty wages owed for Defendants' failure to authorize and permit rest breaks.

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

FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

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

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

100. Defendants failed to provide Plaintiff and the similarly situated Employee Class

Members with accurate itemized wage statements in writing, as required by the Labor Code and paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to Employees by Defendants failed to accurately account for wages, overtime, and premium pay, including for all overtime and double time hours worked and for deficient meal periods and rest breaks, all of which Defendants knew or reasonably should have known were owed to the Employees, as alleged above.

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

102. Plaintiff and the Class Members suffered injury as a result of Defendants' knowing and intentional failure to provide them with the wage and hour statements as required by law and are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the Defendants have failed to provide an accurate wage statement, failed to provide accurate and complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and the Plaintiff and Class Members cannot promptly and easily determine from the wage statement alone one or more of the following: (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the employer made from gross

1 wages to determine the net wages paid to the employee during the pay period, (iii) The name and
2 address of the employer and, (iv) The name of the employee and only the last four digits of his or
3 her social security number or an employee identification number other than a social security
4 number. For purposes of Labor Code § 226(e) “promptly and easily determine” means a
5 reasonable person [i.e. an objective standard] would be able to readily ascertain the information
6 without reference to other documents or information.

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

15 104. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
16 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
17 Class suffered injuries, including among other things confusion over whether they received all
18 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
19 them to make mathematical computations to analyze whether the wages paid in fact compensated
20 them correctly for all hours worked.

21 105. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
22 IWC Wage Order, Plaintiff and the Employee Class Members are entitled to recover the greater of
23 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
24 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
25 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to
26 an award of costs and reasonable attorneys’ fees.

27 ///

28 ///

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

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

107. 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.

108. Defendants unlawfully received and/or collected wages from the Employees in the Class by requiring off-the-clock work, by miscalculating overtime, and by automatically deducting time for meal periods when they were not lawfully provided and 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. In addition to failing to authorize and permit rest breaks, Defendants unlawfully deducted up to 30 minutes for meal periods that were received without violation. Thus, by deducting 30 minutes for a meal period that was generally not lawfully provided if at all, Defendants effectively and unlawfully deducted at least 30 minutes of hours worked from each Employee’s daily work shifts. In order to avoid overtime, Defendants’ managers would require Plaintiff and Class Members to record their scheduled hours rather than the actual hours worked. By not compensating Employees for all hours worked, Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

109. 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)

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

111. 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.

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

113. Defendants violated Labor Code § 204 by systematically refusing to timely pay wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers are required “to pay each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in

1 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
2 hours than those fixed by the order or under conditions of labor prohibited by the order is
3 unlawful.” Plaintiff and the Class Members may therefore pursue damages and penalties for
4 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
5 penalties under paragraph 20 of the applicable IWC Wage Orders.

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

11 **EIGHTH CAUSE OF ACTION**
12 **VIOLATION OF LABOR CODE § 203**
13 **(Against All Defendants)**

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

16 116. Plaintiff and numerous Class Members are no longer employed by Defendants;
17 they either quit Defendants’ employ or were fired therefrom.

18 117. Defendants failed to pay these Employees all wages due and certain at the time of
19 termination or within seventy-two hours of resignation. Plaintiff’s official termination date was
20 June 5, 2023 and Defendants did not Plaintiff until June 16, 2024, eleven days after the statutory
21 waiting period requirement.

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

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

1 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and
2 rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the
3 required time was willful within the meaning of Labor Code § 203.

4 120. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
5 are required "to pay each employee, on the established payday for the period involved, not less
6 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
7 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
8 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class Members
9 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
10 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
11 IWC Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and
12 Defendants are subject to a fine of not less than \$100 for causing Employees "to work for longer
13 hours than those fixed, or under conditions of labor prohibited by an order of the commission" or
14 if the employer pays "a wage less than the minimum fixed by an order of the commission" or
15 "violates...any provision of this chapter or any order or ruling of the commission."

16 121. Upon information and belief, Defendant Mitsubishi is and has been a client
17 employer within the definition of Labor Code § 2810.3 and shares with Industrial Clerical
18 Recruiters, Inc., the labor contractor, all civil legal responsibility and civil liability for failure to
19 pay all wages earned by Plaintiff and the Class Members, including the failure to pay all wages
20 due and owing upon termination or separation from Defendants' employment.

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

25 ///

26 ///

27 ///

28

1 **NINTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

6 124. 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.

10 125. During the course of Plaintiff's 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.

14 126. 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.

17 127. 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 and by adjusting or
19 otherwise rounding and shaving them down.

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

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

24 ///

25 ///

26 ///

1 **TENTH CAUSE OF ACTION**

2 **FAILURE TO PRODUCE REQUESTED RECORDS, LABOR CODE §§ 226 and 1198**

3 **(Against All Defendants)**

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

6 131. Pursuant to California Labor Code § 226, current and former employees have the
7 right to inspect or receive a copy of their records pertaining to their employment, upon reasonable
8 request to their employer. Under this statute, an employer that receives a request to inspect or
9 receive a copy of records pertaining to a current or former employee must comply with the request
10 as soon as practicable, but no later than twenty-one calendar days from the date of the request.

11 132. Pursuant to California Labor Code § 1198.5(a), every current and former employee,
12 or his or her representative, has the right to inspect and receive a copy of the personnel records
13 that the employer maintains relating to the employee's performance or to any grievance concerning
14 the employee. Under this statute, upon written request from a current or former employee or his or
15 her representative, an employer must make the contents of those personnel records available for
16 inspection or provide a copy of the personnel records to the current or former employee, or his or
17 her representative, not later than thirty calendar days from the date the employer receives the
18 written request, subject to some limited exceptions. Failure to comply with these requests allows
19 for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and
20 226(f).

21 133. Plaintiff sent written requests through her counsel to Defendants for their payroll
22 records, timecards, and personnel records. However, Plaintiff has not received all of her requested
23 records as of the date of this Complaint.

24 134. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely
25 produce the required records requested by Plaintiff.

26 135. On information and belief, Defendants' failure to provide Plaintiff with all of her
27 requested employment records is not an isolated incident but was instead consistent with
28 Defendants' policy and practice that applied to Plaintiff and Employees.

136. Pursuant to California Labor Code § 1198.5, Plaintiff and Employees are entitled to a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and costs.

137. Pursuant to California Labor Code § 226(f), Plaintiff is entitled to a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and cost, and the other Class Members similarly situated are similarly entitled.

ELEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES LABOR CODE § 2802

(Against All Defendants)

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

139. Plaintiff is informed and believes and based thereon alleges that throughout the period applicable, Defendants required Plaintiff and the Class Members to pay for necessary work-related expenses they incurred. Defendants required Plaintiff and the Class Members to use their cellular phones to conduct work-related business. Defendants must reimburse Plaintiff and Class Members for the items they were prohibited from retrieving after being let go, as further addressed above. Plaintiff and the Class Members must be reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do so.

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

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

1 consequences on their employment.

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

8 **TWELFTH CAUSE OF ACTION**

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

10 **(Against All Defendants)**

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

17 144. Plaintiff is a "person" within the meaning of the Business & Professions Code
18 § 17204, has suffered injury, and therefore, has standing to bring this cause of action for
19 injunctive relief, restitution, and other appropriate equitable relief.

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

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

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

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

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

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

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

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

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

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

154. Plaintiff and the Employees in the Class are also aggrieved employees as defined under Labor Code § 2699(c) 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.

155. 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.

156. 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, 206.5, 226, 226.2, 226.7, 432.5, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 et seq.

1 157. More specifically, after complying with the notice procedures of Labor Code §
2 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
3 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above
4 addressed underlying claims and seeking penalties as specified by the applicable corresponding
5 provisions, including as follows:

6 158. (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved
7 Employees all earned regular pay and minimum wages for regular hours worked and for failure to
8 pay overtime premium wages for overtime hours worked under Labor Code §§ 226.2, 510,
9 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC
10 Wage Order(s) seeking all civil and statutory penalties available and applicable, and wages, under
11 Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys'
12 fees and costs pursuant to Labor Code § 2699(g)(1);

13 159. (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the
14 Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and
15 permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu
16 thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the
17 applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable,
18 including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code
19 §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys'
20 fees and costs pursuant to Labor Code § 2699(g)(1);

21 160. (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure
22 to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and
23 failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code
24 §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage
25 Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor
26 Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable
27 IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).
28 More specifically, by providing inaccurate wage statements and failing to maintain records as

1 required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to
2 civil penalties under Labor Code §226.3, which in addition to other penalties provided by law,
3 subjects Defendants to “a penalty in the amount of two hundred fifty dollars (\$250) per employee
4 per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
5 violation in a subsequent citation, ...”;

6 161. (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed,
7 including at least semi-monthly and upon separation or termination, under Labor Code §§ 201,
8 201, 203, 204, 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable,
9 and wages, under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and
10 paragraph 20 of the applicable IWC Wage Orders, and also for attorneys’ fees and costs pursuant
11 to Labor Code § 2699(g)(1);

12 162. (e) Unlawful Deductions and Failure to Reimburse Necessary Business
13 Expenses: For Defendants’ unlawful deductions from wages and for Defendants’ failure to
14 reimburse the necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1,
15 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking
16 civil penalties available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802,
17 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys’ fees
18 and costs pursuant to Labor Code § 2699(g)(1);

19 163. (f) 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(g)(1).

25 164. 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
in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1)

1 For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
2 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

3 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
4 each pay period for which the employee was underpaid in addition to an amount sufficient to
5 recover underpaid wages...

6
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
14 (c) The civil penalties provided for in this section are in addition to any other civil or
15 criminal penalty provided by law.

16 165. Plaintiff has exhausted his administrative remedies by submitting a certified letter to
17 the LWDA and Defendants on June 04, 2024 (LWDA-CM-1031972-24) addressing in detail the
18 specific provisions of the Labor Code Defendants have violated and addressing the facts and legal
19 theories to support the alleged violations and requested penalties. The LWDA has not provided
20 notice of its intent to investigate the alleged violations within 65 calendar days of the postmark
21 date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations
22 addressed herein and in the PAGA Notice letter and the original Complaint.

23 **RELIEF REQUESTED**

24 WHEREFORE, Plaintiff prays for the following relief:

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

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

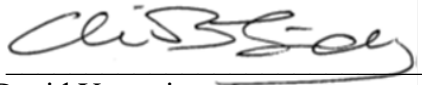
5 21. For an award providing for the payment of the costs of this suit;

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 8, 2024

D.LAW, INC.

10
11 By: 

David Yeremian

Alvin B. Lindsay

Melissa Rodriguez

Attorneys for Plaintiff YVETTE R. REYES

and all others similarly situated

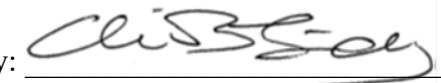
DEMAND FOR JURY TRIAL

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

DATED: August 8, 2024

D.LAW, INC.

By:



David Yeremian

Alvin B. Lindsay

Melissa Rodriguez

Attorneys for Plaintiff YVETTE R. REYES
and all others similarly situated

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

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.

C T Corporation System, Agent for Service of Process
Mitsubishi Cement Corporation
 330 N Brand Blvd., Suite 700
 Glendale, CA 91203

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am “readily familiar” with this firm’s practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

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

Executed on August 8, 2024, at Glendale, California.

Sasha Zambrano