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11 *situated*

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

13 **COUNTY OF SANTA CLARA**

14 DIANA C. MERINO, individually, and on
15 behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 HINES SERVICES INC., a California
19 corporation; and DOES 1 through 50,
20 inclusive,

21 Defendants.

CASE NUMBER: 24CV448784

CLASS ACTION COMPLAINT

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay Timely Wages
6. Failure to Pay All Wages Due to Discharged and Quitting Employees
7. Failure to Furnish Accurate Itemized Statements
8. Failure to Maintain Required Records
9. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
10. Failure to Pay and Include COVID-19 Supplemental Sick Pay on Wage Statements
11. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

12. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

1 This is a Class and Representative Action brought by Diana C. Merino, individually and
2 on behalf of all other non-exempt, hourly employees (“Plaintiff”), relating to systemic violations
3 of California wage and hour laws by her from employer, Hines Services Inc. (“Defendant”).
4 Plaintiff makes the following allegations on information and belief, except as to allegations
5 pertaining to Plaintiff individually, which are based on his personal knowledge.

6 **INTRODUCTION**

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

9 2. Defendant maximized profits by cutting labor costs, grossly understaffing
10 worksites, denying meal and rest breaks, systematically requiring off-the-clock work, failing to
11 pay the regular rate of pay based upon nondiscretionary bonus payments and cheating their
12 employees out of minimum and overtime wages and premium payments.

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

19 4. Plaintiff seeks declaratory, compensatory and other statutorily available relief for
20 herself and a Class of all current and former non-exempt, hourly employees of Defendant during
21 the applicable limitations period to compensate these workers for the wages Defendant has stolen
22 from them and to protect current and future workers from being subjected to similar unlawful
23 working conditions perpetrated by Defendant.

24 **JURISDICTION AND VENUE**

25 5. The Superior Court of the State of California has jurisdiction in this matter
26 because Plaintiff is a resident of the State of California, and Defendant is licensed to do business
27 under the laws of the State of California.

6. Venue is proper in this judicial district and the County of Santa Clara because Defendant maintains its corporate headquarters in the City of Campbell, a city located in the County of Santa Clara and Plaintiff and other non-exempt, hourly employees worked for Defendant, in the County of Santa Clara. Many other non-exempt, hourly employees also worked for Defendant in the County of Santa Clara.

7. Defendant employed Plaintiff and the other nonexempt, hourly employees within the State of California and the unlawful acts alleged herein have a direct effect on Plaintiff and other nonexempt, hourly employees.

THE PARTIES

8. Plaintiff is a citizen of the State of California and resides in the State of California. During the relevant time period, Plaintiff was employed by Defendant as a custodian.

9. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times relevant hereto was, a corporation organized and existing under the laws of the State of California. Defendant is authorized to conduct business and does conduct business in the State of California. Defendant offers maintenance service for its customers whereby it provides nonexempt, hourly employees to perform custodial and other related services as instructed by Defendant.

10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the other aggrieved employees.

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

1 Defendant are legally attributable to the other Defendants.

2 12. Plaintiff is informed and believes, and based thereon alleges, that each of the
3 Defendants sued herein was, at all relevant times, the employer, owner, shareholder, principal,
4 joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the remaining
5 Defendants, and was acting, at least in part, within the course and scope of such employment and
6 agency, with the express and implied permission, consent and knowledge, approval and/or
7 ratification of the other Defendants. The above co-Defendant, managing agents, and supervisors,
8 aided, abetted, condoned, permitted, approved, authorized, and/or ratified the unlawful acts
9 described herein.

10 **CLASS ACTION ALLEGATIONS**

11 13. Pursuant to Cal. Code of Civ. P. § 382, Plaintiff brings this action on behalf of
12 herself and the following Class (“Class Members”):

13 All current and former nonexempt hourly employees who worked for
14 Defendant anytime in the State of California during the statute of
 limitations period.

15 14. Plaintiff reserves the right to name additional Class representatives as may be
16 necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of
17 the proposed Class and/or add subclasses before the Court determines whether certification is
18 appropriate.

19 15. This action is appropriately suited for a class action because:

20 A. The proposed Class is a significant number. Plaintiff is informed and
21 believes that the proposed Class consists of at least seventy-five (75) current and former non-
22 exempt employees, rendering joinder impractical.

23 B. This action involves common questions of law and fact to the proposed
24 Class because the action focuses on Defendant’s systematic course of illegal payroll practices
25 and policies, which was applied to all non-exempt employees in uniform violation of the
26 California Labor Code, IWC Wage Orders, and the California Business and Professions Code,
27
28

1 which prohibits unfair business practices arising from such violations. Here are a few common
2 questions of law and fact that will drive resolution of this action:

- 3 1. Whether Defendant failed to provide non-exempt employees with legally
4 compliant meal periods and rest breaks, and whether Defendant properly
5 paid premium pay at the appropriate regular rate as a result of missed and
6 non-compliant meal periods and rest breaks;
- 7 2. Whether Defendant failed to timely pay wages to non-exempt employees
8 in compliance with California law;
- 9 3. Whether Defendant time rounding policy and practice is in violation of
10 California law;
- 11 4. Whether Defendant failed to pay overtime and minimum wages to non-
12 exempt employees in compliance with California law;
- 13 5. Whether Defendant failed to pay the regular rate of pay based upon
14 nondiscretionary bonus/commission payments;
- 15 6. Whether Defendant failed to maintain required records and accurate wage
16 statements for non-exempt employees;
- 17 7. Whether Defendant failed to pay non-exempt employees all wages due,
18 for all hours worked, including for off-the-clock work, travel time, pre and
19 post-shift work and COVID screening and testing;
- 20 8. Whether Defendant failed to pay COVID-19 supplemental sick pay and
21 include it on wage statements;
- 22 9. Whether Defendant engaged in unfair and/or unlawful business practices.

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

27 D. Plaintiff is able to fairly and adequately protect the interests of all
28 members of the proposed Class because it is in her best interests to prosecute the claims alleged

1 herein to obtain full compensation due to the proposed Class for all services rendered and hours
2 worked. Plaintiff has also retained counsel that is experienced in wage and hour class action
3 litigation.

4 **FIRST CAUSE OF ACTION**
5 **Failure to Provide Required Meal Periods**
6 **[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; and All Applicable IWC**
7 **Wage Orders and Applicable Sections]**
8 **(On Behalf of Plaintiff and the Class Against all Defendants)**

9 16. Plaintiff incorporates herein by specific reference, as though fully set forth, the
10 allegations in paragraphs 1 through 15 (A) – (D).

11 17. During the statute of limitations period, as part of Defendant’s unlawful policies
12 and practices to deprive their non-exempt employees of all wages earned and due, Defendant
13 required, permitted or otherwise suffered Plaintiff and Class members to perform work during
14 their meal periods, to completely skip their meal periods, to take late and short meal periods,
15 auto-deducting meal periods, and Defendant has otherwise failed to provide the required meal
16 periods to Plaintiff and Class members as required under California Labor Code §§ 226.7, 512,
17 and § 11 of the applicable IWC Order.

18 18. Moreover, Defendant interfered with and restricted the ability of Plaintiff and
19 Class members to take meal periods by requiring them to carry cell phones and walkie-talkies
20 during meal periods, and not permitting Plaintiff and the other Class members to leave their work
21 areas when taking meal periods.

22 19. Defendant has implemented several common policies and practices that have
23 caused Plaintiff and Class members to systematically miss and otherwise take non-compliant
24 meal periods.

25 20. Defendant grossly understaffs its work assignments and work sites such that non-
26 exempt employees are given so much work to complete that they regularly miss or take non-
27 compliant meal periods. As a direct consequence of this understaffing, Plaintiff and Class
28 members have so much work to complete within their scheduled shifts that they are forced to
skip their meal periods altogether, to take them after working longer than five (5) hours, to

1 perform work during their meal periods, or return to work after taking less than a thirty (30)
2 minute meal period. Further, Defendant failed to implement a meal period policy for work shifts
3 longer than ten (10) hours or more.

4 21. Moreover, Defendant failed to implement adequate policies or procedures to
5 provide meal periods to their non-exempt employees. Among other things, Defendant
6 overworked Plaintiff and Class members and did not adequately advise them of their rights to
7 take meal periods, and systematically denied them the opportunity to take meal periods,
8 including second meal periods during shifts of ten hours or longer.

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

15 23. Defendant further violated California Labor Code sections 226.7, 510, 1194,
16 1197, and all applicable IWC Wage Orders, by failing to compensate Plaintiff and Class
17 members for all hours worked during their meal periods.

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

21 **SECOND CAUSE OF ACTION**

22 **Failure to Provide Required Rest Breaks**

23 **[Cal. Lab. Code §§ 226.7, 512; and All Applicable IWC Wage Orders
and Applicable Sections]**

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

25 25. Plaintiff incorporates herein by specific reference, as though fully set forth, the
26 allegations in paragraphs 1 through 24.

27 26. At all times relevant herein, as part of Defendant's illegal policies and practices to
28 deprive its non-exempt employees of all wages earned and due, Defendant failed to permit

1 Plaintiff and Class members to take rest breaks as required under California Labor Code §§
2 226.7 and 512, and the pertinent sections of all applicable IWC Wage Orders.

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

13 28. Defendant further violated California Labor Code § 226.7, and § 12, all applicable
14 IWC Wage Orders and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200
15 *et. seq.*, by failing to pay Plaintiff and Class members who were not provided with a rest break,
16 in accordance with the applicable wage order, one additional hour of compensation at the proper
17 regular rate of pay for each workday that a rest break was not provided.

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

21 **THIRD CAUSE OF ACTION**

22 **Failure to Pay Overtime Wages**

23 **[Cal. Lab. Code §§ 510, 1194, 1198; and All Applicable IWC Wage Orders
and Applicable Sections]**

24 **(On Behalf of Plaintiff and the Class against all Defendants)**

25 30. Plaintiff incorporates herein by specific reference, as though fully set forth, the
26 allegations in paragraphs 1 through 29.

27 31. Pursuant to California Labor Code §§ 510, 1194, and all applicable wage orders
28 and applicable sections, Defendant is required to compensate Plaintiff and Class members for all

overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

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

33. In a short-sighted attempt to maximize profits, Defendant understaffed its work site locations and assignments. Not only has this practice resulted in widespread missed meal and rest breaks, but it has also caused Plaintiff and Class members to perform significant amounts of work while off-the-clock.

34. Defendant also engaged in an unlawful time rounding practice, where the time worked by Plaintiff and Class members is systematically rounded down, resulting in unpaid regular and overtime wages. Defendant implement a rounding practice wherein it rounds the

1 time worked by non-exempt employees to the nearest quarter-hour. Defendant pay Plaintiff and
2 Class members based on rounded time.

3 35. Plaintiff and Class members must get to work by no later than the start of their
4 shifts and usually earlier. Thus, they are not afforded the benefit of clocking in for work a few
5 minutes late. Likewise, Plaintiff and Class members are in a rush to complete their mandatory
6 job duties, so they are rarely afforded the benefit of clocking out early at the end of their shifts.
7 This results in widespread underpayment of time worked.

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

16 37. Defendant's conduct described herein violates California Labor Code §§ 510,
17 1194, 1198 and all applicable IWC Wage Orders and applicable sections. Therefore, pursuant to
18 California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions
19 under the California Labor Code and IWC Wage Orders, Plaintiff and Class members are
20 entitled to recover the unpaid balance of wages owed to them by Defendant, plus interest,
21 penalties, attorneys' fees, expenses, and costs of suit.

22 **FOURTH CAUSE OF ACTION**

23 **Failure to Pay Minimum Wages**

24 **[Cal. Lab. Code §§ 1194, 1197; All Applicable IWC Wage Orders and Applicable Sections]
25 (On Behalf of Plaintiff and the Class against all Defendants)**

26 38. Plaintiff incorporates herein by specific reference, as though fully set forth, the
27 allegations in paragraphs 1 through 37.

28 39. Pursuant to Cal. Lab. Code §§ 1194, 1197, and all applicable IWC Wage Orders
and applicable sections, payment to an employee of less than the applicable minimum wage for

1 all hours worked in a payroll period is unlawful.

2 40. During the statute of limitations period, the hourly rates for Plaintiff and Class
3 members were precisely at minimum wage. Based on this common practice, Defendant failed to
4 actually pay Plaintiff and Class members minimum wages for all hours worked by requiring,
5 permitting or suffering them to work off-the-clock, such as requiring them to work through meal,
6 rest breaks, but not compensating them for this time, and failing to include this time in all hours
7 worked, engaging in illegal and unlawful rounding and time entry manipulation practices, failing
8 to pay for travel time, failing to pay for pre-and post-shift work (including COVID screenings
9 and donning and doffing uniforms and safety equipment), failing to pay for time incurred for
10 forced COVID vaccinations in order to work; and other methods to be discovered.

11 41. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and
12 all applicable IWC Wage Orders and applicable sections. As a proximate result of the
13 aforementioned violations, Plaintiff and other aggrieved employees have been damaged in an
14 amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203,
15 226, 558, 1194, 1197.1, and any other applicable law, Plaintiff and other aggrieved employees
16 are entitled to recover the unpaid balance of wages owed to them by Defendant's, plus interest,
17 penalties, attorneys' fees, expenses, and costs of suit.

18 **FIFTH CAUSE OF ACTION**

19 **Failure to Pay Timely Wages**

20 **[Cal. Lab. Code §§ 204, 210]**

21 **(On Behalf of Plaintiff and the Class against all Defendants)**

22 42. Plaintiff incorporates herein by specific reference, as though fully set forth, the
23 allegations in paragraphs 1 through 41.

24 43. California Labor Code § 204 provides that all wages earned by any person in any
25 employment between the 1st and 15th days, inclusive, of any calendar month, other than those
26 wages due upon termination of an employee, are due and payable between the 16th and 26th day
27 of the month during which the labor was performed. California Labor Code § 204 further
28 provides that all wages earned by any person in any employment between the 16th and the last
day, inclusive, of any calendar month, other than those wages due upon termination of an

1 employee, are due and payable between the 1st and the 10th day of the following month.

2 California Labor Code § 204 further provides that all wages eared for labor in excess of the
3 normal work period shall be paid no later than the payday for the next regular payroll period.

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

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

13 **SIXTH CAUSE OF ACTION**
14 **Failure to Pay All Wages Due to Discharged and Quitting Employees**
15 **[Cal. Lab. Code §§ 201, 202, 203]**
16 **(On Behalf of Plaintiff and the Class against all Defendants)**

17 46. Plaintiff incorporates herein by specific reference, as though fully set forth, the
18 allegations in paragraphs 1 through 45.

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

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

28 49. California Labor Code § 203 provides that if an employer willfully fails to pay, in
accordance with California Labor Code §§ 201 and 202, any wages of an employee who is

1 discharged or who quits, the employer is liable for waiting time penalties in the form of
2 continued compensation to the employee at the same rate for up to thirty (30) workdays.

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

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

15 52. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff
16 and Class members have been deprived of compensation in an amount according to proof at the
17 time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such
18 amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code
19 § 1194.

20 **SEVENTH CAUSE OF ACTION**

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

25 53. Plaintiff incorporates herein by specific reference, as though fully set forth, the
26 allegations in paragraphs 1 through 52.

27 54. During the statute of limitations period, Defendant routinely failed to provide
28 Plaintiff and Class members with timely, accurate, and itemized wage statements in writing
showing each employee's gross wages earned, total hours worked, all deductions made, net

1 wages earned, and all applicable hourly rates in effect during each pay period and the
2 corresponding number of hours worked at each hourly rate, in violation of California Labor Code
3 § 226 and all applicable IWC Wage Orders and applicable sections.

4 55. Defendant's pay stubs violate Labor Code § 226 on their face by, failing to list the
5 applicable rates of pay for regular and overtime hours worked by Plaintiff and aggrieved
6 employees, and in violation of Labor Code §§246, 248.1, 248.2 and 248.6 based upon Defendant
7 failure to include information related to COVID-19 supplemental sick pay. Further, Defendant
8 was and is not providing Plaintiff and other aggrieved employees with proper meal periods and
9 rest breaks but intentionally fails to include in their wage statements one (1) additional hour of
10 compensation at their regular rates of pay for each non-compliant meal period or rest break
11 which include but not limited to, shift differentials, nondiscretionary bonuses, etc., and failing to
12 pay all wages due based upon Defendant's illegal and unlawful rounding policy which favored
13 Defendant, its failure to pay for time incurred for forced COVID vaccinations in order to work,
14 and other yet to be discovered violations.

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

20 57. As a proximate result of Defendant unlawful actions and omissions, Plaintiff and
21 Class members have been damaged in an amount according to proof at trial, and seek all wages
22 earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to
23 all available penalties, including but not limited to penalties pursuant to California Labor Code
24 §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees,
25 including but not limited to those provided in California Labor Code § 226(e), as well as other
26 available remedies.

Failure to Maintain Required Records
[Cal. Lab. Code §§ 226, 247.5, 248.2, 248.6, 1174; and All Applicable IWC Wage Orders
and Applicable Sections]
(On Behalf of Plaintiff and the Class against all Defendants)

59. During the statute of limitations period, as part of Defendant's illegal payroll policies and practices to deprive Plaintiff and Class members of all wages earned and due, Defendant knowingly and intentionally failed to maintain records as required under California Labor Code §§ 226, 247.5, 248.2, 248.6, 1174, and all applicable IWC Wage Orders and applicable sections, including but not limited to, the following records: total daily hours worked by each non-exempt employee; applicable rates of pay; all deductions; meal periods; time records showing when each non-exempt employee begins and ends each workday; supplemental COVID-19 sick pay; and accurate itemized wage statements.

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

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

62. California Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the

1 discharge of her his or her duties, or of his or her obedience to the directions of the employer.

2 63. During the Class period, Defendant knowingly and willfully failed to indemnify
3 Plaintiff and Class members for all business expenses and/or losses incurred in direct
4 consequence of the discharge of their duties while working under the direction of Defendant,
5 including but not limited to, personal protective equipment, mileage reimbursement and cellular
6 telephone costs used for business purposes, in violation of California Labor Code § 2802.

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

13 **TENTH CAUSE OF ACTION**

14 **Failure to Provide Sick Leave and Supplemental COVID-19 Sick Leaves**
15 **[Cal. Lab. Code §§246, 248.1, 248.2 and 248.6]**
16 **(On Behalf of Plaintiff and the Class against Defendants)**

17 65. Plaintiff incorporates herein by specific reference, as though fully set forth, the
18 allegations in paragraphs 1 through 64.

19 66. Plaintiff is informed and believes Defendant knowingly and intentionally failed in
20 their affirmative obligation provide and pay paid sick leave and Covid-19 Supplemental Sick
21 Leave to Plaintiff and Class Members in violation of Labor Code section 246. 81. Labor Code
22 section 246(b)(1) requires that employees accrue sick leave at the commencement of
23 employment at a rate of 1 hour for every thirty hours worked. Section 246(c) entitles employees
24 to use any accrued sick leave beginning on their 90th day of employment.

25 67. Defendant failed to pay Plaintiff and Class Members paid sick leave at one of the
26 lawful rates set forth in the statute because Defendant failed to include in their calculation the
27 commissions and additional remuneration received by Plaintiff and the Class Members.

28 68. Furthermore, Defendant knowingly and intentionally failed in their affirmative
obligation to provide and pay Covid-19 Supplemental Sick Leave to Class Members in violation

1 of Labor Code sections 246, 247.5, 248.1, 248.2, and 248.6. 84. Labor Code section 248.1
2 requires employers to provide up to 80 hours of Covid19 Supplemental Paid Sick Leave to
3 employees for the period of April 16, 2020 to December 31, 2020. Labor Code 248.2 requires
4 employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of
5 January 1, 2021 through September 30, 2021. Labor Code section 248.6 extended Covid sick
6 leave protections and requires employers to provide up to 80 hours of Covid-19 Supplemental
7 Paid Sick Leave for the period of January 1, 2022 to September 30, 2022, and may be extended
8 thereafter.

9 69. Pursuant to Labor Code section 248.1, employees must be paid for Covid-19
10 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the
11 last pay period, (2) state minimum wage, (3) local minimum wage.

12 70. Under Labor Code section 248.2, non-exempt employees must be paid Covid-19
13 supplemental paid sick leave according to the highest of the following four methods: (1) the
14 regular rate of pay for the workweek in which the employee uses COVID-19 supplemental paid
15 sick leave, (2) the employee's total wages in a 90-day period divided by total hours worked, (3)
16 the state minimum wage, or (4) the local minimum wage.

17 71. Labor Code section 248.6 requires employers to pay Covid-19 supplemental sick
18 leave under either one of the following methods: (1) regular rate of pay or (2) the employee's
19 total wages in a 90-day period divided by total hours worked.

20 72. Defendant failed to provide and pay Covid-19 supplemental paid sick leave in the
21 manner described above because Defendant failed to pay Plaintiff and the Class Members such
22 sick leave at one of the rates authorized by statute.

23 73. As a result, Defendant violated the Labor Code and are liable to Plaintiff and the
24 Class for underpaid sick leave earnings, in addition to interest, attorneys' fees, and costs.

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

74. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 73.

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

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

77. Among other practices, Defendant has avoided payment of wages, overtime wages, the provision of meal and rest breaks, failed to pay premium payments, failed to provide for supplemental COVID-19 sick leave, failed to pay employees for time spent testing for COVID-19 and receiving the vaccination; and other benefits as required by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage Orders. Further, Defendant has failed to record, report, and pay the correct sums of assessment to the state authorities under the California Labor Code and other applicable regulations.

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

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

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

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

9 80. Plaintiff incorporates herein by specific reference as though fully set forth the
10 allegations in paragraphs 1 through 79, with exception of the allegations in Paragraphs 13
11 through 15 (A)-(D).

12 81. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings
13 this action on behalf of the State of California, and all other aggrieved employees (e.g., current
14 and former direct and temporary, hourly-paid employees working or placed on assignment by
15 Defendant in the State of California at any time within the period beginning one (1) year prior
16 and sixty-five (65) days prior to the July 26, 2024 notice Plaintiff provided to the LWDA and
17 Defendant, and ending at the time this action proceeds to final judgment ("statute of limitations
18 period").

19 82. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code
20 § 2699(c), and is a proper representative to bring a civil action on behalf of himself and other
21 current and former nonexempt, hourly employees who worked for Defendant in the State of
22 California pursuant to the procedures specified in California Labor Code § 2699.3, because
23 Plaintiff was employed by Defendant and the alleged violations of the California Labor Code
24 were committed against Plaintiff.

25 83. As set forth fully in the above paragraphs incorporated herein, Defendant failed to
26 pay overtime wages, failed to provide the requisite meal, recovery and rest breaks (an any
27 associated premium pay at the regular rate), failed to provide accurate wage statements, failure to
28 pay all wages owed at the time of termination, failed to maintain accurate employment records,
and failed to indemnify the aggrieved employees for reasonable business expenses in violation of

1 California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197,
2 1198 and 2802.

3 84. California Labor Code §432 provides an employee must be provided with copies
4 of any signed instrument relating to obtaining or holding employment. Defendant failed to
5 provide all copies of signed documents relating to obtaining and holding employment to Plaintiff
6 and the other aggrieved employees.

7 85. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”),
8 Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited
9 to penalties under California Labor Code §§ 2699, 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1199,
10 from Defendant in a representative action for the violations set forth above, including but not
11 limited to violations of California Labor Code §§ 200, 201, 202, 203, 204, 210, 226, 226.7,
12 218.6, 226, 226.7, 247.5, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 1198.5, 1199, and
13 2802. Plaintiff is also entitled to an award of reasonable attorneys’ fees and costs pursuant to
14 California Labor Code § 2699(g)(1).

15 86. Pursuant to California Labor Code §§ 2699.3, on July 26, 2024, Plaintiff gave
16 written notice by certified mail to the California Labor and Workforce Development Agency
17 (“LWDA”) and Defendant of the specific provisions of the California Labor Code and IWC
18 Wage Orders alleged to have been violated, including the facts and theories to support the
19 alleged violations. Within sixty-five (65) calendar of the postmark date of Plaintiff’s notice
20 letter, the LWDA did not provide notice to Plaintiff that it intends to investigate the alleged
21 violations. Therefore, Plaintiff has complied with all of the requirements set forth in California
22 Labor Code § 2699.3 to commence a representative action under PAGA.

23 **PRAYER FOR RELIEF**

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

- 27 1. For compensatory damages in an amount to be ascertained at trial;

2. For restitution of all monies due to Plaintiff and Class members, as well as disgorged profits from the unfair and unlawful business practices of Defendant;
3. For meal and rest break compensation pursuant to California Labor Code § 226.7 and all applicable IWC Wage Orders and pertinent sections;
4. For liquidated damages pursuant to California Labor Code § 1194.2;
5. For preliminary and permanent injunctive relief enjoining Defendant from violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from engaging in the unlawful business practices complained of herein;
6. For waiting time penalties pursuant to California Labor Code § 203;
7. For statutory penalties according to proof, including but not limited to all penalties authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 558, 1174.5, 1775, 1197.1 and 2699.3;
8. An award of actual, statutory, and/or punitive damages to Plaintiff and the Class pursuant to California Civil Code §§ 1785.31 and 1786.50, in an amount subject to proof at trial;
9. For interest on the unpaid wages at 10 percent per annum pursuant to California Labor Code §§ 218.6, 1194, 2802 and California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
10. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5, 226, 1194, 2802, and California Code of Civil Procedure § 1021.5, California Civil Code § 1786.50(a)(2), California Civil Code § 1785.31(a), and/or any other applicable provisions providing for attorneys' fees and costs;
11. For declaratory relief;
12. For an order requiring and certifying the First through Eleventh Causes of Action as a class action;
13. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as Class counsel; and
14. For such further relief that the Court may deem just and proper.

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DEMAND FOR JURY TRIAL

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

DATED: October 4, 2024

THE WHEELER LAW FIRM, APC

By: 
SCOTT ERNEST WHEELER
JUSTIN A. WHEELER

Attorney for Plaintiff and all others similarly situated