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Clerk of the Superior Court
By J. Renteria ,Deputy Clerk

Kevin A. Lipeles (Bar No. 244275)
Thomas H. Schelly (Bar No. 217285)
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252

Attorneys for Plaintiff,
AMY BARCLAY SIMS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

AMY BARCLAY SIMS, an individual,
on her own behalf and on behalf of all
others similarly situated,

Plaintiffs,

vs.

SEDANO FORD OF LM, INC., DBA
SEDANO FORD, a California
corporation; SEDANO AUTOMOTIVE
GROUP, an entity of unknown form; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 24CU005216C

CLASS ACTION COMPLAINT FOR:

- 1. FAILURE TO PAY PREMIUM OVERTIME WAGES DUE (Cal. Labor Code §§ 510, 511, 558, 1194, 1198; IWC Wage Order No. 7);**
- 2. FAILURE TO PAY MINIMUM WAGES (Cal. Labor Code §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 7);**
- 3. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 7);**
- 4. FAILURE TO PROVIDE TIMELY OFF DUTY REST PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 7);**
- 5. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226; IWC Wage Order No. 7);**
- 6. FAILURE TO PAY WAGES DUE ON TERMINATION (Cal. Labor Code §§ 201-203);**
- 7. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. Labor Code § 2802);**
- 8. FAILURE TO PAY VESTED VACATION PAY ON SEPARATION OF EMPLOYMENT (Cal. Labor Code §227.3);**
- 9. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. Labor Code §1198.5); and**

1 **10. UNFAIR COMPETITION (Cal. Bus. & Prof.**
2 **Code §§17200 et seq.)**

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7 **DEMAND FOR A JURY TRIAL**
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10 All allegations in this Complaint are based upon information and belief except for those
11 allegations which pertain to the Plaintiff named herein and her counsel. Each allegation has ev-
12 identitary support or is likely to have evidentiary support after a reasonable opportunity for fur-
13 ther investigation and discovery.

14 Amy Barclay Sims ("Plaintiff") alleges the following:

15 1. This is a class action brought under California law by an individual who was
16 employed by Sedano Ford of LM, Inc. dba Sedano Ford ("SEDANO FORD") and Sedano
17 Automotive Group ("SAG") (along with DOES 1 through 100, collectively "Defendants").
18 Plaintiff brings this action on behalf of herself and others similarly situated to recover wages
19 from Defendants due to Defendants' systematic failure to pay overtime, minimum wages,
20 failure to provide meal breaks (or pay the statutory compensation due), failure to provide rest
21 breaks (or pay the statutory compensation due), failure to issue accurate wage statements,
22 failure to pay wages due on termination, failure to reimburse business expenses, failure to pay
23 vacation pay and failure to allow inspection of employment records.

24 2. Plaintiffs have worked as employees for Defendants at their business in La
25 Mesa, California. While working, Plaintiffs have been forced to endure stressful and illegal
26 workplace conditions created by Defendants' efforts to maximize profits and tightly control
27 labor costs.

28 3. Plaintiff, like her co-workers whom Defendants also employed during the
applicable limitations period, spend their workdays in La Mesa, California, under illegal and

1 highly regimented circumstances. That regimen results from Defendants' insistence to strictly
2 monitor and curtail labor costs, which Defendants accomplish by not paying for all labor costs,
3 failing to pay overtime, minimum wages, refusing to provide proper meal periods, refusing to
4 provide proper rest periods, not paying the required extra hour for missed meal/rest breaks,
5 failing to issue accurate wage statements, failing to pay all wages due on termination, failing to
6 reimburse business expenses, failing to pay vacation pay, failing to allow inspection of
7 employment records, and by using other unlawful stratagems to ensure that labor costs remain
8 artificially low.

9 4. Plaintiff brings this class action to recover, among other things, wages and
10 penalties from unpaid wages earned and due, including but not limited to, overtime, minimum
11 wages, missed meal/rest break wages, penalties for failure to provide accurate itemized wage
12 statements, wages owed on termination, unreimbursed business expenses, vacation pay, to
13 allow inspection of employment records and interest, attorneys' fees, costs, and expenses.

14 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for
15 herself and all members of the class, to compensate these workers for the unpaid wages and to
16 protect current and future workers of Defendants from being subjected to similar wage theft
17 and otherwise unlawful working conditions.

18 6. Plaintiff also brings an action seeking relief for Defendants' violations of
19 California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and
20 disgorgement of all compensation retained by Defendants as a result of their unlawful and
21 unfair business practices, as well as injunctive relief.

22 7. Pursuant to the California Labor Code, on or about August 9, 2024, Plaintiff
23 filed a notice with Labor and Workforce Development Agency (LWDA) of her intent to
24 pursue claims against Defendant under the Private Attorney General Act (PAGA). As such,
25 Plaintiff further reserves the right to amend this Complaint once she completes and complies
26 with the provisions under the law.

27 **JURISDICTION AND VENUE**

28 8. This Court has jurisdiction over this Complaint under Code of Civil Procedure

§410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business & Professions Code* §§ 17200 *et seq.* Plaintiff Amy Barclay Sims brings this Complaint on her own behalf and on behalf of all persons in the Class as defined in paragraph 18 below.

9. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in the County of San Diego and because Defendants owned and operated their business in the County of San Diego.

THE PARTIES

PLAINTIFF

10. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of San Diego County, California;
- (b) Employed as an hourly employee for Defendants in La Mesa, California;
- (c) Did not receive overtime required by *Labor Code* §§ 1194, 1198, and IWC Wage Order No. 7;
- (d) Did not receive minimum wages required by *Labor Code* §§ 1194, 1194.2, 1997, 1197.1, 1198 and IWC Wage Order No. 7;
- (e) Did not receive the meal periods required by *Labor Code* §266.7 and IWC Wage Order No. 7;
- (f) Did not receive the rest periods required by *Labor Code* §266.7 and IWC Wage Order No. 7;
- (g) Did not receive accurate wage statements as mandated by *Labor Code* §226;
- (h) Was not paid all wages due on termination as required by *Labor Code* §§201-203;
- (i) Was not reimbursed for necessary business expenses as required by *Labor Code* § 2802;

- 1 (j) Was not provided vested vacation pay on separation of employment as
2 required by *Labor Code* §227.3; and
3 (k) Was not provided her personnel records. Each of these was a violation of
4 the *Labor Code*.

5 **DEFENDANTS**

6 11. Plaintiff is informed and believes, and based on that information and belief,
7 alleges, Defendant SEDANO FORD is, and at all times mentioned herein was:

- 8 (a) A California corporation, with a principal place of business at 8970 La
9 Mesa Blvd., La Mesa, California 91942. Defendant SEDANO FORD
10 has been authorized to do business and has been doing business in the
11 County of San Diego;
12 (b) The former employer of Plaintiff and the current and former employer of
13 the putative Class members;
14 (c) Paid Plaintiff and all Class Members on a commission basis and an
15 hourly draw against commissions;
16 (d) Failed to pay Plaintiff and all putative Class members overtime wages;
17 (e) Failed to pay Plaintiff and all putative Class members minimum wages;
18 (f) Failed to provide Plaintiff and all putative Class members with meal/rest
19 periods and failed to provide Plaintiff and all putative Class members
20 with accurate itemized wage statements;
21 (g) Failed to pay Plaintiff and all putative Class members all wages due on
22 termination;
23 (h) Failed to reimburse Plaintiff and all putative Class members for
24 necessary business expenses;
25 (i) Failed to pay Plaintiff and all putative Class members vested and unused
26 vacation pay on separation of employment; and
27 (j) Failed to provide their personnel records. Each of these was a violation
28 of the *Labor Code*.

1 12. Plaintiff is informed and believes, and based on that information and belief,
2 alleges, Defendant SAG is, and at all times mentioned herein was:

- 3 (a) An entity of unknown form, with a principal place of business at 8970 La
4 Mesa Blvd., La Mesa, California 91942. Defendant SAG has been
5 authorized to do business and has been doing business in the County of
6 San Diego;
- 7 (b) The former employer of Plaintiff and the current and former employer of
8 the putative Class members;
- 9 (k) Paid Plaintiff and all Class Members on a commission basis and an
10 hourly draw against commissions;
- 11 (c) Failed to pay Plaintiff and all putative Class members overtime wages;
- 12 (d) Failed to pay Plaintiff and all putative Class members minimum wages;
- 13 (e) Failed to provide Plaintiff and all putative Class members with meal/rest
14 periods and failed to provide Plaintiff and all putative Class members
15 with accurate itemized wage statements;
- 16 (f) Failed to pay Plaintiff and all putative Class members all wages due on
17 termination;
- 18 (g) Failed to reimburse Plaintiff and all putative Class members for
19 necessary business expenses;
- 20 (h) Failed to pay Plaintiff and all putative Class members vested and unused
21 vacation pay on separation of employment; and
- 22 (i) Failed to provide their personnel records. Each of these was a violation
23 of the *Labor Code*.

24 13. The true names and capacities, whether individual, corporate, subsidiary,
25 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown
26 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*
27 *Civil Procedure* § 474. Plaintiff will seek leave to amend her Complaint to allege the true
28 names and capacities of DOES 1 through 100, inclusive, when they are ascertained.

1 14. Plaintiff is informed and believes, and based on that information and belief
2 alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which
3 reside in or are authorized to do, or are otherwise doing, business in the State of California.
4 Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and
5 conduct business in the County of San Diego. Each of the Defendants DOES 1 through 100
6 was the managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator,
7 alter ego and/or representative of one or more of the other Defendants named herein, and acting
8 with permission, authorization, and/or ratification and consent of the other Defendants.

9 15. Plaintiff is informed and believes, and based on that information and belief
10 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
11 inclusive, are responsible in some manner for one or more of the events and happenings that
12 proximately caused the injuries and damages hereinafter alleged.

13 16. Plaintiff is informed and believes, and based on that information and belief
14 alleges, that Defendants named in this Complaint, including DOES 1 through 100, inclusive,
15 are, and at all times mentioned herein were, the agents, servants, and/or employees of each of
16 the other Defendants and that each Defendant was acting within the course and scope of his,
17 hers or its authority as the agent, servant and/or employee of each of the other Defendants.
18 Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the
19 Class, for the damages sustained as a proximate result of their conduct.

20 17. Plaintiff is informed and believes, and based on that information and belief
21 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
22 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
23 themselves and entered into a combination and systemized campaign of activity to *inter alia*
24 damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in
25 derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the
26 Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their
27 conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and
28 belief, and to all appearances, Defendants, and each of them, represented a unified body so that

1 the actions of one Defendant was accomplished in concert with, and with the knowledge,
2 ratification, authorization and approval of each of the other Defendants.

3 **CLASS ALLEGATIONS**

4 **A. The Definition of the Class**

5 18. The Class (“the Class”) is defined as follows:

6 (a) “All current and former employees who were hourly paid employees of
7 Defendants and worked for Defendants in California at any time during the
8 period commencing on the date that is four (4) years prior to the filing of this
9 Complaint and continuing through the present date (the “Class Period”).”

10 (b) “All persons who were hourly paid employees of Defendants and worked for
11 Defendants in California and left the employ of Defendants at any time during
12 the period commencing on the date that is within one (1) year prior to the filing
13 of this Complaint and continuing through the present date (the “Class Period”).”

14 Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to
15 amend or modify the Class description with greater specificity or further
16 division into subclasses or limitation to particular issues.

17 **B. Maintenance of the Action**

18 19. Plaintiff brings this action individually and on behalf of herself and as
19 representative of all similarly situated persons under *Business & Professions Code* §§ 17203
20 and 17204 and *Code of Civil Procedure* § 382.

21 **C. The Class Requisites**

22 20. At all material times, Plaintiff was a member of the Class.

23 21. The Class action meets the statutory prerequisites for maintaining a class action
24 under Code of Civil Procedure § 382 in that:

25 (a) The persons who comprise the Class are so numerous that the joinder of all
26 those persons is impracticable and the disposition of their claims as a Class
27 will benefit the parties and the Court;

- 1 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
2 that are raised in this Complaint are common to the Class and will apply
3 uniformly to every Class member;
- 4 (c) The claims of the representative Plaintiff are typical of the claims of each
5 Class member. Plaintiff, like all Class members, has sustained damages
6 arising from Defendant's violations of the laws of the State of California.
7 Plaintiff, and the Class members, were and are similarly or identically
8 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
9 pattern of misconduct engaged in by the Defendants;
- 10 (d) The representative Plaintiff has, and will continue to, fairly and adequately
11 represent and protect the interests of the Class and has retained counsel
12 who are competent and experienced in class action litigation. There are no
13 material conflicts between the claims of the representative Plaintiff and the
14 Class members that would make class certification inappropriate. Counsel
15 for the Class will vigorously assert the claims of all Class members.

16 22. The persons who comprise the Class are so numerous that joining all of them is
17 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
18 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
19 will fairly and adequately protect the interests of the Class she seeks to represent. Plaintiff does
20 not have any interests that are antagonistic to the Class she seeks to represent. Counsel for
21 Plaintiff are experienced, qualified and generally able to conduct complex class action
22 litigation.

23 23. The Court should permit the action to be maintained as a class action under
24 *Code of Civil Procedure* § 382 because:

- 25 (a) The questions of law and fact common to the Class predominate over any
26 question affecting only individual members:
- 27 (b) A class action is superior to any other available method for fairly and
28 efficiently adjudicating the claims of the Class;

- 1 (c) The Class members are so numerous that it is impractical to bring all of
2 them before the Court;
- 3 (d) Plaintiff and other Class members will not be able to obtain effective and
4 economic legal redress unless the action is maintained as a class action;
- 5 (e) There is a community of interest in obtaining appropriate legal and
6 equitable relief for the statutory violations, and in obtaining adequate
7 compensation for the damages and injuries for which Defendants are
8 responsible in an amount sufficient to adequately compensate the Class
9 members;
- 10 (f) Without Class certification, the prosecution of separate actions by
11 individual Class members would create a risk of:
- 12 i. Inconsistent or varying adjudications for individual Class members
13 that would establish incompatible standards of conduct for
14 Defendant; and/or,
- 15 ii. Adjudication for individual Class members that would, as a
16 practical matter, dispose of other non-party members' interests, or
17 that would substantially impair or impede the non-parties' ability
18 to protect their interests, by, for example, potentially exhausting
19 the funds available from Defendants, and
- 20 (g) Defendant has acted or refused to act on grounds generally applicable to
21 the Classes, making final injunctive relief appropriate for the Class, as a
22 whole.

23 24. Plaintiff contemplates eventually issuing notice to the proposed Class Members
24 that would set forth the subject and nature of the action. The Defendants' own business records
25 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that
26 any further notices may be required, Plaintiff would contemplate using additional media and/or
27 mailing.

28 **GENERAL ALLEGATIONS**

25. At all times material hereto, Defendant SEDANO FORD has been and is, an automobile dealership.

26. At all times material hereto, Defendant SAG has been and is, an entity of unknown form which owns automotive dealerships.

27. Plaintiff and members of the Class were employed as Service Advisors and other non-exempt employees by Defendants in California at various times during the Class Period.

28. The employment by Defendants of the Class Members, and each them, is governed by Industrial Welfare Commission Wage Order 7, which covers those persons employed in the mercantile industry.

THE CONDUCT

29. Plaintiff seeks relief from Defendants' uniform policies and practices of denying Plaintiff and members of the Class wages and compensation owed under California law.

30. Starting on or about April 1, 2015 and continuing to November 14, 2023, Defendants employed Plaintiff on a commission basis and hourly draw at minimum wage against commissions as a Service Advisor in La Mesa, California. Plaintiff helped clients, sold services, obtained payments, prepared invoices and processed warranty claims for authorization.

31. While employed by Defendants as a Service Advisor Plaintiff worked 8-10 hours per day, 5-6 days per week. Plaintiff worked in Defendants' automotive dealership.

OFF-THE-CLOCK WORK

32. Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 585.

33. Defendants required Plaintiff and the Class to regularly perform compensable tasks pre- and post-shift off-the-clock for which they did not receive any compensation. Specifically, at all times relevant, Plaintiff and Class members consistently worked hours for

1 which they were not paid because Plaintiff and the Class members were required to attend
2 meetings for between 15-30 minutes prior to clocking in for their shifts. Further, at times
3 Plaintiff and Class members would clock out for the end of their shifts, but were required to
4 continue working. Defendants were aware of Plaintiff and Class members' off the clock work.

5 34. As a result, and because they improperly treated such pre- and post-shift time as
6 non-compensable, Defendants failed to compensate Plaintiff and the Class for such time.

7 **FAILURE TO PAY OVERTIME WAGES**

8 35. Under California law, non-exempt employees as defined by Wage Order 7, are
9 entitled to premium wages for overtime worked. Under California law, an hourly paid
10 employee is entitled to overtime pay when they exceed eight hours of work in a single day,
11 exceed 40 hours of work in a week or work seven days in a row.

12 36. During the period, it was the practice and policy of Defendants to not properly
13 pay employees' overtime because benefits were not incorporated into the overtime rate. Monies
14 for unpaid overtime remain due and owing. Further, Throughout Plaintiff's and Class members'
15 employment, Plaintiff and Class members worked overtime hours and were not paid overtime
16 pay. Plaintiff worked overtime between 1-6 times per week for between 5-20 hours per week
17 and was never paid overtime.

18 **FAILURE TO PAY MINIMUM WAGES**

19 37. Under California law, non-exempt employees as defined by IWC Wage Order
20 No. 7 are entitled to minimum wages. Labor Code Section 1197 states the California
21 requirement that employees must be paid at least the minimum wage fixed by the Commission
22 or by any applicable state or local law, and any payment of less than the minimum wage is
23 unlawful. Similarly, Labor Code Section 1194 entitles "any employee receiving less than the
24 legal minimum wage...is entitled to recover in a civil action the unpaid balance of the full
25 amount of this minimum wage." IWC Wage Order No. 7, obligates employers to pay each
26 employee minimum wages for all hours worked.

27 38. These minimum wage standards apply to each hour employees worked or were
28 subject to control by the employer for which they were not paid. Therefore, an employer's

1 failure to pay for any particular hour of time worked by an employee or subject to the
2 employer's control is unlawful, even if averaging an employee's total pay over all hours
3 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v.*
4 *Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

5 39. Plaintiff and the Class were not paid minimum wages due to Defendants' failure
6 to afford proper meal/rest breaks. Further, Defendants failed to pay separately and hourly for
7 rest breaks. *See Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98.

8 40. At all times during the relevant time period, Plaintiff and the Class routinely
9 worked schedules such that they were due pay at minimum wage rates. During this period, it
10 was the practice and policy of Defendants to not pay employees' minimum wages. Monies for
11 unpaid minimum wages remain due and owing.

12 **LATE/INTERRUPTED/NOT AFFORDED MEAL BREAKS**

13 41. Under California law, non-exempt employees as defined by IWC Wage Order
14 No. 7, are entitled to a 30-minute lunch period for each 5 hours worked, or major fraction
15 thereof. Non-exempt employees are entitled to one hour pay at their regular pay rate for each
16 day the requisite meal periods are not provided.

17 42. Plaintiff and Class members were routinely not afforded compliant meal breaks.
18 Plaintiff and Class members' meal breaks were routinely interrupted. Plaintiff and Class
19 members also took their meal breaks late 1 to 5 times per week. On days when Plaintiff and
20 Class members worked between 10-12 hours, they were not afforded second meal breaks.

21 43. Defendants' policies and procedures were applied to all non-exempt employees
22 in California and resulted in non-exempt employees working time which was not compensated
23 by any wages in violation of Labor Code sections 510, 1194 and the IWC Wage Order No. 7.
24 As a result, Defendants owe wages at the legal minimum wage rate for unpaid minimum wages
25 to each of their California non-exempt employees whose daily hours were reduced and their
26 meals periods were not afforded.

27 **FAILURE TO AFFORD REST PERIODS**

28

1 44. Plaintiff and Class members were not afforded any rest breaks. On days when
2 Plaintiff and Class members worked 10–12-hour shifts, they were not afforded third breaks.
3 Further, Defendants failed to pay separately and hourly for rest breaks. *See Vaquero v.*
4 *Stoneledge Furniture* (2017) 9 Cal. App. 5th 98.

5 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

6 45. As a result of Defendants’ failure to pay employees at required overtime rates,
7 minimum wages and premium pay for missed meal/rest breaks, the wage statements issued to
8 the employees did not comply with *Labor Code* §226 and the California Industrial Welfare
9 Commission (“IWC”) Wage Order No. 7 in that they did not accurately reflect all wages earned
10 and due and owing.

11 **FAILURE TO PAY WAGES DUE ON TERMINATION**

12 46. As a further result of Defendants’ failure to pay employees at required overtime
13 rates, minimum wage rates, afford proper meal/rest breaks, when the employees left their
14 employ, they were not timely paid all wages due them, as required by Labor Code §§ 201, 202
15 and IWC Wage Order No. 7. Further, it was the practice of Defendants to not pay employees
16 their final paychecks within the time periods mandated by Labor Code §§201, 202 and the
17 IWC Wage Order No. 7.

18 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

19 47. Defendants failed to reimburse Plaintiff and Class members for their necessary
20 business expenses such as personal cell phone use.

21 **FAILURE TO PAY VESTED VACATION PAY ON SEPARATION OF**
22 **EMPLOYMENT**

23 48. Defendants failed to pay vested vacation pay on termination. Plaintiff and Class
24 members were not paid the full amount of their accrued and unused Paid Time Off (“PTO”)
25 upon separation of employment.

26 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

27 49. Defendants failed to allow Plaintiff to timely inspect her records and payroll
28 files.

1 **EXCLUSION OF BENEFITS FROM REGULAR RATE OF PAY**

2 50. California law uses the terms “compensation” and “pay” interchangeably and
3 requires that all applicable remuneration, including but not limited to, commissions, and/or
4 non-discretionary bonuses, and/or gift cards and/or cash payments based on sales numbers,
5 etc., be included when calculating an employee's regular rate of pay.

6 51. Defendants failed to properly pay and calculate wages due to excluding extra
7 benefits, such as a 50% discount on labor for vehicle service and paying for parts at cost plus
8 10%, from regular rate of pay calculations. Plaintiff’s paystubs do not show any values of
9 discounts provided as an extra benefit. Such benefits payments are required under California
10 law to be included in an employee’s regular rate of pay for wage calculation. Defendants
11 failed to do so, thereby failing to pay employees their full wages as required under the Labor
12 Code.

13 52. Plaintiff and members of the Class received benefits that must be included when
14 calculating their regular rates of pay for purposes of wages. However, Defendants failed to
15 correctly calculate Plaintiff and members of the Class’s regular rate of pay to include all
16 applicable remuneration, including, but not limited to, benefits.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PAY OVERTIME**

19 **(Labor Code §§510, 511, 558, 1194, 1198 and IWC Wage Order No. 7 by Plaintiffs**
20 **Against Defendants and Does 1-100)**

21 53. Plaintiff and the Class reallege and incorporate by reference all of the allegations
22 set forth in this Complaint.

23 54. During Plaintiff’s entire employment with Defendants, pursuant to Cal. Lab.
24 Code §§510, 1194, and 1198, and IWC Wage Order No. 7, Defendants were required to
25 compensate Plaintiff and Class members with premium pay for all overtime work performed,
26 for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and for
27 the first eight (8) hours on the seventh (7th) consecutive day of any work week.

1 55. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
2 who had not been paid overtime compensation could recover the unpaid balance of the full
3 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
4 fees and costs of suit.

5 56. Pursuant to IWC Wage Order No. 7, § 3, "Employment beyond eight (8) hours
6 in any workday is permissible provided the employee is compensated for such overtime at not
7 less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours
8 worked in excess of eight (8) hours up to and including twelve (12) hours in any workday... "

9 57. California Labor Code section 558 provides in pertinent part:

10 (a) Any employer or other person acting on behalf of an employer who
11 violates, or causes to be violated, a section of this chapter or any
12 provision regulating hours and days of work in any order of the
13 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

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

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

19 (3) Wages recovered pursuant to this section shall be paid to the affected
20 employee...

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

23 58. Throughout Plaintiff's and Class members' employment, Plaintiff and Class
24 members worked overtime hours and were not paid overtime pay. Plaintiff worked overtime
25 between 1-6 times per week for between 5-20 hours per week and was never paid overtime.
26 Further, Plaintiff and Class members engaged in off the clock work without compensation.

27 59. The regular rate of pay under California law includes all remuneration for
28 employment paid, on behalf of the employer, to the employee. Employers must properly factor

1 all economic items into the regular rate of pay for purposes of calculating the overtime wages
2 due to their employees. *See Alvarado v. Dart Container Corp. of California* (2018) 4 Cal. 5th
3 542, 554, 568 (the regular rate of pay must include the “value of any nonhourly compensation,”
4 including bonuses).

5 60. Specifically, Defendants had a company-wide policy of failing to properly pay
6 and calculate wages due.

7 61. Defendants violated the rights of Plaintiff and the members of the Class by not
8 correctly calculating their regular rate of pay. Plaintiff and Class members’ extra benefits were
9 not incorporated into their regular rate of pay.

10 62. The foregoing overtime compensation is owed and unpaid. As a direct and
11 proximate result of Defendants’ failure and refusal to pay overtime, Plaintiff and Class
12 members suffered damages in an amount to be proven at trial.

13 63. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
14 counsel in order to enforce Plaintiff’s rights to overtime pay, is entitled to recover Plaintiff’s
15 attorneys’ fees, costs and interest.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY MINIMUM WAGES DUE**

18 **(IWC Wage Order No. 7; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiffs**
19 **Against Defendants and Does 1 through 100)**

20 64. Plaintiff and the Class reallege and incorporate by reference all of the allegations
21 set forth in this Complaint.

22 65. Labor Code §§ 1194(a) states: “Notwithstanding any agreement to work for a
23 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
24 compensation applicable to the employee is entitled to recover in a civil action the unpaid
25 balance of the full amount of this minimum wage or overtime compensation, including interest
26 thereon, reasonable attorney's fees, and costs of suit.”

27 66. *Labor Code* § 1197 states the California requirement that employees must be
28 paid at least the minimum wage fixed by the Commission, and any payment of less than the

1 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving
2 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
3 the full amount of this minimum wage.” IWC Wage Order 7-2001 also obligates employers to
4 pay each employee minimum wages for all hours worked. These minimum wage standards
5 apply to each hour employees worked for which they were not paid. Therefore, an employer’s
6 failure to pay for any particular hour of time worked by an employee is unlawful, even if
7 averaging an employee’s total pay over all hours worked, paid or not, results in an average
8 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
9 (2005).

10 67. Pursuant to IWC Wage Order No. 7, Defendants are required to pay the
11 members of the Class for all hours worked, meaning the time during which an employee is
12 subject to the control of an employer, including all the time the employee is suffered or
13 permitted to work, whether or not required to do so.

14 68. Furthermore, pursuant to *Labor Code* § 1198, “[t]he maximum hours of work
15 and the standard conditions of labor fixed by the commission shall be the maximum hours of
16 work and the standard conditions of labor for employees. The employment of any employee for
17 longer hours than those fixed by the order or under conditions of labor prohibited by the order
18 is unlawful.”

19 69. Defendants failed to satisfy minimum wage requirements because they
20 improperly failed to afford Plaintiff and Class members meal/rest breaks in violation of *Labor*
21 *Code* §§ 226.7, 1197, 1198 and IWC Wage Order No. 7.

22 70. Defendants’ pattern, practice and uniform administration of corporate policy
23 regarding illegal employee compensation as described herein is unlawful and creates an
24 entitlement, pursuant to *Labor Code* § 218, to recovery by Plaintiff and the members of the
25 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at
26 the appropriate rate.

27 71. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
28 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*

1 Code § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid
2 for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for
3 the time associated with the overtime for which they received no compensation. *See Sillah v.*
4 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
5 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
6 showed they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*,
7 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

8 72. Plaintiff and the other Class members suffered and continue to suffer losses
9 related to the use and enjoyment of compensation due and owing to them as a direct result of
10 Defendants' unlawful acts and Labor Code violations in an amount to be shown according to
11 proof at trial and within the jurisdictional limitations of this Court.

12 73. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
13 Class are entitled to recover the unpaid balances of the minimum wages Defendants owe them,
14 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to
15 proof.

16 **THIRD CAUSE OF ACTION**

17 **FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS**

18 **(IWC Wage Order No. 7; Labor Code §§ 226.7, 512 By Plaintiffs Against Defendants and**
19 **Does 1 through 100)**

20 74. Plaintiff and the Class reallege and incorporate by reference all of the allegations
21 set forth in this Complaint.

22 75. California Labor Code §226.7(a) prohibits an employer from requiring an
23 employee to work during any meal period mandated by an applicable Industrial Wage Order.
24 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
25 employee to work during a meal or rest break or recovery period mandated pursuant to an
26 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
27 Commission..."
28

1 76. California Labor Code §1198 makes unlawful the employment of an employee
2 under conditions the IWC prohibits.

3 77. IWC Wage Order No. 7 provides, in relevant part: "No employer shall employ
4 any person for a work period of more than five (5) hours without a meal period of not less than
5 30-minutes, except that when a work period of not more than six (6) hours will complete the
6 day's work the meal period may be waived by mutual consent of the employer and the
7 employee."

8 78. IWC Wage Order No. 7, section (11)(c) further provides, in relevant part:
9 "Unless the employee is relieved of all duty during a 30-minute meal period, the meal period
10 shall be considered an 'on duty' meal period and counted as time worked."

11 79. Section 512(a) of the California Labor Code provides, in relevant part, that:

12 An employer may not employ an employee for a work period of more than five
13 hours per day without providing the employee with a meal period of not less
14 than 30-minutes, except that if the total work period per day of the employee is
15 no more than six hours, the meal period may be waived by mutual consent of
16 both the employer and employee. An employer may not employ an employee
17 for a work period of more than 10 hours per day without providing the
18 employee with a second meal period of not less than 30-minutes, except that if
the total hours worked is no more than 12 hours, the second meal period may
be waived by mutual consent of the employer and the employee only if the first
meal period was not waived.

19 80. The Labor Code and Wage Order provisions cited above require California
20 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
21 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
22 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
23 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
24 the fifth hour of their shifts.

25 81. As alleged herein, Defendants failed to relieve employees of duties for timely
26 meal breaks throughout the Class Period. Further, Plaintiff and the members of the Class's meal
27 periods were routinely interrupted, afforded late or not afforded at all. Defendants required
28 Service Advisors to answer their phones during their meal breaks.

1 82. Under California law, employers must also record their employees' meal
2 periods: "Every employer shall keep accurate information with respect to each employee,
3 including the following: ... Meal periods ... shall also be recorded. Meal periods during which
4 operations cease ... need not be recorded." IWC Wage Order No. 7, § (7)(A)(3). Where the
5 employer has failed to keep records required by statute, the consequences of such failure should
6 fall on the employer, not the employee. In such a situation, imprecise evidence by the employee
7 can provide a sufficient basis for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727
8 (1988). Inasmuch as Defendants had an obligation under the record-keeping requirements of
9 the Wage Order to track meal periods unless "all work ceases", Defendants knew or should
10 have known its employees were regularly afforded late and/or missing meal periods during the
11 Class Period.

12 83. Defendants have a policy or practice of failing to ensure that Plaintiff and
13 members of the Class take proper meal periods required by California Labor Code §226.7 and
14 IWC Wage Order No. 7, §11.

15 84. By their actions in not affording Plaintiff and Class members compliant meal
16 periods, Defendants violated Cal. Lab. Code §226.7(b) and section 11 of Wage Order No. 7 in
17 the amount of one additional hour of pay at the employee's regular rate of compensation for
18 each work period during each day in which Defendants failed to provide employees with proper
19 statutory off-duty meal periods.

20 85. Defendants also have a policy or practice of failing to pay each of their
21 employees who was not provided with a proper meal period an additional one hour of
22 compensation at each employee's regular rate of pay.

23 86. Cal. Labor Code § 218 authorizes Plaintiff and the members of the Class to
24 bring a private right of action to recover wages due based on the deprivation of proper meal
25 periods under Cal. Labor Code § 226.7(b).

26 87. As a direct and proximate result of Defendants' unlawful conduct as alleged
27 herein, Plaintiff and members of the Class have sustained economic damages, including but not
28 limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled

1 to recover economic and statutory damages, attorneys' fees and penalties and other appropriate
2 relief due to Defendants' violations of the California Labor Code and IWC Wage Order No. 7.

3 **FOURTH CAUSE OF ACTION**

4 **FOR FAILURE TO PROVIDE REST PERIODS**

5 **(Labor Code § 226.7 and IWC Wage Order No. 7 By Plaintiffs Against Defendants and**
6 **Does 1 through 100)**

7 88. Plaintiff and the Class reallege and incorporate by reference all of the allegations
8 set forth in this Complaint.

9 89. Labor Code § 226.7 and IWC Wage Order No. 7 provide that employers shall
10 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
11 per four hours of work, or major fraction thereof. Further, *Vaquero v. Stoneledge Furniture*
12 *LLC*, 9 Cal. App. 5th 98 (2017) mandates that employees paid pursuant to a commission
13 compensation system be compensated separately for their rest periods.

14 90. Labor Code § 226.7 and IWC Wage Order No. 7 provide that if an employer
15 fails to provide an employee with rest periods in accordance with those provisions, the
16 employer shall pay the employee one hour of pay at the employee's regular rate of
17 compensation for each workday that the rest periods were not so provided.

18 91. Defendants have intentionally and improperly denied rest periods to Plaintiff
19 and the Class in violation of Labor Code § 226.7 and IWC Wage Order No. 7. Plaintiff and
20 Class members were not afforded any rest breaks.

21 92. While working on a commission-only basis, Plaintiffs and other non-exempt
22 employees worked shifts in excess of 3.5 hours, and were never provided with a paid rest
23 period for every 4-hour period worked, or major fraction thereof, because Defendants'
24 commission compensation plan failed to separately compensate Plaintiffs and other non-
25 exempt employees for required rest periods. *See Vaquero v. Stoneledge Furniture LLC*, 9 Cal.
26 App. 5th 98 (2017); *Bluford v. Safeway Inc.*, 216 Cal. App. 4th 864 (2013) ("There is no
27 dispute that Safeway's activity-based compensation system did not separately compensate
28 drivers for their rest periods."). As a result, Plaintiffs and other non-exempt employees were

1 not provided with compensated rest periods as required by Industrial Welfare Commission
2 Wage Order 7 § 12(A).

3 93. At all times relevant hereto, Plaintiff and members of the Class have worked 8
4 or more hours daily.

5 94. At all times relevant hereto, Defendants failed to provide proper rest periods as
6 required by Labor Code § 226.7 and IWC Wage Order No. 7.

7 95. By virtue of Defendants' unlawful failure to provide proper rest periods to the
8 Plaintiff and the Class, Plaintiff and the Class have suffered, and will continue to suffer,
9 damages in amounts which are presently unknown to Plaintiff and the Class, but which exceed
10 the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

11 **FIFTH CAUSE OF ACTION**

12 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE**

13 **ITEMIZED STATEMENTS**

14 **(Labor Code §226 and IWC Wage Order No. 7 By Plaintiffs Against Defendants and Does**
15 **1 through 100)**

16 96. Plaintiff and the Class reallege and incorporate by reference all of the allegations
17 set forth in this Complaint.

18 97. Pursuant to IWC Wage Order No. 7, Defendants were the employers of Plaintiff
19 and the Class.

20 98. Pursuant to California Labor Code sections 226 and 1174, and IWC Wage Order
21 No. 4, section 7, Defendants are required to maintain and provide accurate records relating to
22 employee compensation including all formulas and production records used to calculate wages
23 due.

24 99. Defendants are further required to provide, *inter alia*, semimonthly or at the time
25 of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2)
26 all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which
27 the employee is being paid; (5) the name of the employee; and (6) the name and address of the
28 legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

1 100. Section 226(e) provides that an employee is entitled to recover \$50 for the initial
2 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period,
3 not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay periods
4 in which the employer knowingly and intentionally failed to provide accurate itemized
5 statements to the employee causing the employee to suffer injury.

6 101. Notwithstanding these provisions. Defendants have engaged in a uniform
7 practice of refusing to maintain and provide the accurate records and wage statements required
8 by California law.

9 102. Throughout the Class Period, Defendants intentionally and knowingly provided
10 Plaintiff and other members of the Class with weekly itemized wage statements containing
11 inaccurate information regarding the wages earned by Plaintiff and members of the Class in
12 that the payments owed to Plaintiff and the members of the Class for overtime compensation,
13 minimum wage compensation, missed or late meal/rest periods, were not included in gross
14 wages earned by Plaintiff and members of the Class.

15 103. As a result, Plaintiff and members of the Class have been injured by having been
16 deprived of the true facts pertaining to their compensation and employment.

17 104. Plaintiff and members of the Class were damaged by these failures because,
18 among other things, the failures led them to believe that they were not entitled to overtime
19 compensation, minimum wages, pay for meal/rest periods not timely provided, even though
20 they were so entitled and these failures hindered them from determining the amounts of wages
21 owed to them.

22 105. Plaintiff and members of the Class are entitled to the amounts provided in Labor
23 Code §226(e), plus attorneys' fees and costs.

24 106. As result, Plaintiff seeks recovery of the penalties authorized by Labor Code
25 sections 226(e) and 558, and such other penalties and legal and equitable remedies as are
26 provided by law for Defendants' improper conduct.

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1 115. At all times relevant herein, Defendants were aware that Plaintiff and Class
2 members were using their personal cell phones for business, but failed to indemnify Plaintiff
3 and Class members for all their business-related expenses, including wear and tear expenses, in
4 accordance with Labor Code §2802. Plaintiff is informed and believes and thereon alleges that
5 at all relevant times, Defendants maintained a practice of not reimbursing Plaintiff and Class
6 Members for their work-related expenses that they incurred in using their cell phones for work-
7 related purposes.

8 116. As a result of Defendants' conduct, Plaintiff and Class Members suffered
9 damages in an amount, subject to proof, to the extent they were not reimbursed for all of their
10 business-related expenses incurred in the discharge of their duties.

11 117. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to
12 recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and
13 costs of suit.

14 **EIGHTH CAUSE OF ACTION**
15 **FAILURE TO PAY VESTED VACATION PAY ON SEPARATION OF**
16 **EMPLOYMENT**

17 **(Cal. Labor Code § 227.3 – By Plaintiffs against Defendants and Does 1 through 100)**

18 118. Plaintiff and the Class reallege and incorporate by reference all of the allegations
19 set forth in this Complaint.

20 119. California law, including Labor Code § 227.3 dictates that when an employer
21 has a vacation policy, the pay constitutes additional wages for services performed and it must
22 pay out all accrued but unused vacation time upon termination. Once a proportionate right to
23 paid vacation vests as labor is rendered, an employer may not adopt policies that require
24 forfeiture of vested vacation time without compensation. (*Suarez v. Plastic Dress-Up Co.*
25 (1982) 31 Cal.3d 774, 784 [“The right to a paid vacation, when offered in an employer's policy
26 or contract of employment, constitute deferred wages for services rendered”]; *Rhea v. General*
27 *Atomics* (2014) 227 Cal. App. 4th 1560, 1571 [“California law prohibits an employer from
28 requiring the forfeiture of vacation time”].)

1 120. As a matter of policy, Defendants did not provide vested vacation pay on
2 termination of employment.

3 121. Defendants' vacation policy, which applies to all of its employees in California,
4 violates California law because it fails to pay out all of the employees' vested and unused
5 vacation time on termination.

6 122. Plaintiff and Class members did not receive proper protections and benefits of
7 the laws governing payment of vested vacation time and/or PTO upon separation of
8 employment.

9 123. Pursuant to Labor Code § 227.3, an employer that has implemented a paid
10 vacation, paid time off, or compensated time off policy must, upon an employee's separation
11 from employment, pay to the employee all vested, but unused vacation and/or paid time off at
12 her final rate of pay.

13 124. Here, Plaintiff did not use all her PTO prior to her termination.

14 125. As a result, Defendants failed to pay Plaintiff and Class members all vested, but
15 unused vacation time and/or PTO upon separation from employment, thereby receiving an
16 economic benefit.

17 126. Plaintiff is informed and believes and based thereon alleges Defendants' willful
18 failure to pay all vacation wages due and owing to Plaintiff and Class members upon
19 separation from employment results in a continued payment of wages up to thirty (30) days
20 from the time the wages were due. Therefore, Plaintiff and Class members are also entitled to
21 compensation pursuant to Labor Code sections 201-203.

22 127. Plaintiff and members of the Class have been damaged by Defendants' vacation
23 policy because they have been forced to forfeit earned vacation wages.

24 128. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff and
25 members of the Class have sustained damages, including loss of earnings in an amount to be
26 established at trial, in addition to prejudgment interest, costs, and attorneys' fees pursuant to
27 applicable law.

28

1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

3 ***(Labor Code §1198.5 By Plaintiffs Against Defendants and Does 1 through 100)***

4 129. Plaintiff and the Class reallege and incorporate by reference all of the allegations
5 set forth in this Complaint.

6 130. California Labor Code Section 1198.5 provides:

- 7
- 8 (a) Every current and former employee, or his or her representative, has the
9 right to inspect and receive a copy of the personnel records that the
10 employer maintains relating to the employee's performance or to any
11 grievance concerning the employee.
- 12 (b) The employer shall make the contents of those personnel records available
13 for inspection to the current or former employee, or his or her
14 representative, at reasonable intervals and at reasonable times, but not later
15 than 30 calendar days from the date the employer receives a written request,
16 unless the current or former employee, or his or her representative, and the
17 employer agree in writing to a date beyond 30 calendar days to inspect the
18 records, and the agreed-upon date does not exceed 35 calendar days from
19 the employer's receipt of the written request to inspect the records. Upon a
20 written request from a current or former employee, or his or her
21 representative, the employer shall also provide a copy of the personnel
22 records,..... later than 30 calendar days from the date the employer receives
23 the request...
- 24 (k) If an employer fails to permit a current or former employee, or his or her
25 representative, to inspect or copy personnel records within the times specified I
26 this section... the current or former employee may recover a penalty of seven
27 hundred fifty dollars (\$750) from the employer.
- 28 (1) A current or former employee may also bring an action for injunctive relief
to obtain compliance with this section, and may recover costs and reasonable
attorney's fees in such an action.

24 131. Additionally, pursuant to IWC Wage Order No. 7, at section 7 re: Records,
25 employers are required to keep accurate payroll records on each employee, and such records
26 must be made readily available for inspection by the employee upon reasonable request. The
27 employer must also maintain accurate production records.

1 132. On or about August 9, 2024, Plaintiff's counsel issued a written request to
2 Defendants for copies of her personnel records.

3 133. Under California Labor Code Sections 226, 432 and 1198.5, such records were
4 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
5 Plaintiff's counsel and Defendants did not enter into an agreement to enlarge the time for
6 Defendants' compliance, and Defendants have failed and refused to permit Plaintiff copies of
7 her records.

8 134. As a direct result and consequence of Defendants' failure and refusal to permit
9 Plaintiff full access to her records, Plaintiff seeks injunctive relief in the form of an order or
10 decree mandating Defendants' compliance. Plaintiff has suffered and will suffer harm as a
11 result of Defendants' ongoing refusal to comply. Plaintiff also seeks recovery of the statutory
12 penalty of \$750 based upon Defendants' violation of §1198.

13 **TENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

15 **(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against Defendants and Does**
16 **1 through 100)**

17 135. Plaintiff and the Class reallege and incorporate by reference all of the allegations
18 set forth in this Complaint.

19 136. Pursuant to IWC Wage Order No. 7, Defendants were the employers of Plaintiff
20 and the Class. Defendants are also "person(s)" as that term is defined in Business & Professions
21 Code §17021.

22 137. The Business & Professions Code defines unfair competition as any unlawful,
23 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
24 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
25 Plaintiff and the Class overtime; (2) pay Plaintiff and Class members minimum wages; (3) pay
26 Plaintiff and the Class for meal periods not afforded, (4) pay Plaintiff and the Class for rest
27 periods not afforded, (5) furnish Plaintiff and the Class with accurate itemized wage statements,
28 as mandated by the applicable Labor Code and Industrial Welfare Commission requirements,

1 (6) pay all wages due on termination, (7) reimburse business expenses, (8) pay vacation pay on
2 separation of employment and (9) provide personnel records, all in violation of Business &
3 Professions Code §§ 17200 *et seq.*

4 138. By and through the unfair and unlawful business practices described herein,
5 Defendants have obtained valuable property, money and services from the Plaintiff and the
6 Class and has deprived them of valuable rights and benefits guaranteed by law all to the
7 detriment of Plaintiff and the Class.

8 139. All the acts described herein are violations of, among other things, the Labor
9 Code and Industrial Commission Wage Order No. 7, are unlawful and in violation of public
10 policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby
11 constitute unfair and unlawful business practices in violation of Business & Professions Code
12 §§ 17200 *et seq.*

13 140. Plaintiff and the Class are entitled to, and do, seek such relief as may be
14 necessary to restore to them the money and property which Defendants have acquired, or of
15 which Plaintiff and the Class have been deprived by means of the above-described unfair and
16 unlawful business practices.

17 141. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
18 above-described business practices are unfair and unlawful and that injunctive relief should be
19 issued restraining Defendants from engaging in any of the above described unfair and unlawful
20 business practices in the future.

21 142. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
22 redress the injuries which they have suffered as a consequence of the unfair and unlawful
23 business practices of Defendants. As a result of the unfair and unlawful business practices
24 described above, Plaintiff and the Class have suffered and will continue to suffer irreparable
25 harm unless Defendants are restrained from continuing to engage in these unfair and unlawful
26 business practices. In addition, Defendants should be required to disgorge the unpaid moneys
27 to Plaintiff and the Class.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in her favor and against Defendants, and each of them, as follows:

1. For compensatory damages in the amount of unpaid overtime due to Plaintiff and Class members, according to proof;
2. For compensatory damages in the amount of unpaid minimum wages due to Plaintiff and Class member, according to proof;
3. For payment of unpaid wages in accordance with California labor and employment law;
4. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class Members for each workday that a meal period was not afforded;
5. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class Members for each workday that a rest period was not afforded;
6. For payment to Plaintiff and Class Members of waiting time penalties pursuant to *Cal. Lab. Code* §203, in an amount equal to their respective daily rates of pay at the time of termination or layoff, multiplied by the total amount of days elapsed between the date of the involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a maximum of 30 days' pay, according to proof;
7. For specific relief enforcing waiting time penalties of 30 days of per diem wages pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;
8. For compensatory damages in the amount of Plaintiff and Class members' out of pocket expenses for cell phone use and/or reimbursement of monies incurred while performing Defendants' business-related duties plus interests, costs and attorneys' fees pursuant to *Cal. Code Civ. Proc.* §2802(c);
9. For all vacation wages owed;
10. For an award of consequential damages in Plaintiff and Class Members' favor and against Defendants, in an amount to be proven at trial;
11. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

1 12. For specific relief enforcing waiting time penalties of 30 days of per diem wages
2 pursuant to *Cal. Bus. & Prof. Code* §17200, according to proof;

3 13. For prejudgment interest accrued on all due and unpaid overtime and minimum
4 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
5 1194(a), according to proof;

6 14. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.3, 226.7, 1198.5,
7 according to proof;

8 15. For civil penalties pursuant to *Cal. Labor Code* §1198 and IWC Wage Order
9 No. 4;

10 16. For reasonable costs, including attorneys' fees, in an amount according to proof
11 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 1198.5(1), 218.5, 2802 and/or *Cal. Code of*
12 *Civ. Proc.* §1021.5;

13 17. For an award of restitution of wages to Plaintiff and Class members in an
14 amount equal to the amount of wages owed and unpaid, according to proof;

15 18. For injunctive relief requiring Defendants to comply with Labor Code
16 1198.5(b)(1);

17 19. For injunctive relief ordering the continuing unfair business acts and practices to
18 cease, as the Court deems just and proper;

19 20. For other injunctive relief ordering Defendants to notify Plaintiff and Class
20 members that they have not been paid the proper amounts in accordance with California law;

21 21. For punitive and exemplary damages in a sum to be determined at trial; and

22 22. For such other and further relief as the Court deems just and proper.

23 **DEMAND FOR JURY TRIAL**

24 Plaintiff Amy Barclay Sims hereby respectfully requests a trial by jury for all claims
25 and issues raised in her Complaint that may be entitled to a jury trial.

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LIPELES LAW GROUP, APC

Date: August 9, 2024

By: 
Thomas H. Schelly
Attorneys for Plaintiff
Amy Barclay Sims