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and all others similarly situated

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

CLIFFORD BROOKS SR. and WILLIAM
JOHN HASTINGS, individuals, on behalf
of themselves and others similarly situated,

Plaintiffs,

vs.

WHOLE FOODS MARKET
CALIFORNIA, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages and for All Hours Worked;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Labor Code § 226.7;
4. Rest-Break Liability Labor Code § 226.7;
5. Failure to Pay Reporting Time Under 8 CCR § 11160(5);
6. Violation of Labor Code § 226(a);
7. Violation of Labor Code § 221;
8. Violation of Labor Code § 204;
9. Violation of Labor Code § 203;
10. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
11. Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802; and
12. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiffs CLIFFORD BROOKS SR. and WILLIAM JOHN HASTINGS (hereinafter
2 “Plaintiffs”), on behalf of themselves and all other similarly situated non-exempt, hourly
3 employees employed by Defendants in California during the relevant period (collectively,
4 “Employees”; individually, “Employee”) complain of Defendants as follows:

5 **INTRODUCTION**

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

14 2. Plaintiff CLIFFORD BROOKS, SR. (“Brooks”) worked a grocery team member at
15 Defendants’ store locations in California. Plaintiff WILLIAM JOHN HASTINGS (“Hastings”) works as an Assistant Meat Manager at Defendants’ store locations in California. Defendants
16 employed other similarly situated Class members as assistant meat managers, produce managers,
17 grocery team members, cashiers, and in similar and related positions in connection with providing
18 grocery retail services to Defendants’ customers throughout California. Plaintiffs and the other
19 similarly situated Class members worked at Defendants’ behest without being paid all wages due
20 and without being provided all required breaks. More specifically, Plaintiffs and the other
21 similarly situated Class members were employed by Defendants and shared similar job duties and
22 responsibilities, were subjected to the same policies and practices, and endured similar violations
23 at the hands of Defendants as the other Employees who served in similar and related positions.

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

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

6 4. Defendant WHOLE FOODS MARKET CALIFORNIA, INC. ("Whole Foods") is a
7 California corporation which lists its principal address with the California Secretary of State in
8 Alameda, California. It lists its type of business as "Grocery." Defendant WHOLE FOODS
9 MARKET CALIFORNIA, INC. is listed as the employer on the wage statements issued to
10 Plaintiffs by Defendants, and upon information and belief to other Class members. Upon
11 information and belief, Whole Foods operates various facilities and store locations where their
12 California Employees are based out of, including in Alameda County, where Defendant Whole
13 Foods maintain its principal and California office according to its listing with the California
14 Secretary of State. On information and belief, Defendants maintain operations and locations
15 throughout Alameda County and California. Whole Food's website explains that: "... a
16 subsidiary of Amazon, is an American multinational supermarket chain headquartered in Austin,
17 Texas, which sells products free from hydrogenated fats and artificial colors, flavors, and
18 preservatives."

19 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
20 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
21 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
22 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
23 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
24 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Alameda County,
25 where Defendants designate their principal address.

26 6. The true names and capacities, whether individual, corporate, associate, or
27 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
28 unknown to Plaintiffs, who therefore sues these Defendants by such fictitious names under Code

1 of Civil Procedure § 474. Plaintiffs are informed and believe and thereon allege that Defendants
2 designated herein as Does 1 through 50, inclusive, and each of them, is legally responsible in some
3 manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this
4 Complaint to reflect the true names and capacities of the Defendants designated herein as Does 1
5 through 50 when their identities become known.

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

17 **FACTUAL BACKGROUND**

18 8. The Employees who comprise the Class, including Plaintiffs, are non-exempt
19 employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare
20 Commission (“IWC”). During the period of four years prior to the filing of this action through its
21 resolution, Plaintiffs and the Class members were either not paid by Defendants for all hours
22 worked or were not paid at the appropriate minimum, regular and overtime rates, including for
23 meal period and rest break premium payments. Plaintiffs also contend that Defendants failed to
24 pay Plaintiffs and the Class members all wages due and owing, including by miscalculating wages
25 owed and by requiring off the clock work, failed to provide meal and rest breaks, and failed to
26 furnish accurate wage statements and timely pay all wages owed, all in violation of various
27 provisions of the California Labor Code and applicable paragraphs of the IWC Wage Orders.
28

1 9. During the course of Plaintiffs' and the Class members' employment with
2 Defendants, they were not paid all wages they were owed, including for all work performed
3 (resulting in "off the clock" work) and for all their overtime hours worked, or were not paid at the
4 correct rates. This has resulted in systematic and ongoing violations of the California Labor Code
5 and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-
6 exempt, hourly employees as assistant meat managers, produce managers, grocery team members,
7 cashiers based out of Defendants' facilities in California.

8 10. Plaintiff Brooks was employed by Defendants as a Grocery Team Member, with
9 duties that included unloading pallets of all the groceries and stocking groceries in Defendants'
10 stores. Plaintiff Hastings has been employed by Defendants as an Assistant Meat Manager, with
11 duties that included running the shop, making sure the various types of meat are cut and ready for
12 service, assisting with ordering, and metrics. Plaintiffs generally worked 35 to 40 hours per week,
13 five to six shifts per week. Plaintiffs' scheduled hours were generally from 5:00 a.m. through 1:30
14 p.m. and 12:30 p.m. to 9:00 P.M. Plaintiffs also worked on Saturdays and Sundays as required.

15 11. Despite their obligation to maintain accurate timekeeping records for hours worked
16 by the Class members, Defendants maintained improper time record-keeping systems across their
17 California facilities and their store locations. This has led to systematic failure to pay wages.

18 12. The failure to maintain accurate timekeeping and payroll records perpetrated by
19 Defendants has also been exacerbated by the off the clock work Defendants required their
20 Employees to endure. Plaintiffs and Class members were required to work off the clock without
21 pay. At the end of shifts, Plaintiffs and class members were required to clock out and then turn in
22 their walkie-talkies to the charging station, which resulted in approximately 10 minutes of unpaid
23 hours worked on each shift worked.

24 13. Plaintiffs and the Class members were also required to work or otherwise remain
25 under Defendants' control after their shift end times, including on site at store locations and
26 through after-hours work-related communications and other work requirements. Specifically,
27 Plaintiffs were required to be available on their cell phones off the clock and on their walkie
28 talkies during meal and rest breaks to respond to communication from Defendants' managers.

1 14. Defendants also failed to pay reporting time pay to Plaintiffs and Class members.
2 On several occasions, Plaintiffs reported to work only to be sent home within two hours due to a
3 lack of work. Defendants failed to pay Employees in such instances for half of their usual or
4 scheduled day's work or four hours at the correct rate of pay.

5 15. Defendants followed a similar unlawful practice, upon information and belief, in
6 connection with other Employees in a concerted effort to limit and restrict regular and overtime
7 hours earned by and owing to Plaintiffs and the other Class members. Time worked off the clock
8 also caused Plaintiffs and other Class members to work beyond eight hours in a shift. As a result
9 of the above-described off the clock work, Defendants failed to pay Plaintiffs and Class members
10 overtime for several minutes to hours during work shifts which Defendants did not record in any
11 timekeeping or payroll records.

12 16. Defendants also failed to pay Holiday Overtime at the required Holiday pay rate,
13 therefore causing Plaintiffs and Class members to be underpaid. Upon information and belief, to
14 the extent Defendants paid any shift differentials or bonuses or other forms of remuneration for
15 hours worked in a pay period, Defendants also failed to include them in the regular rate of pay
16 used to calculate and pay overtime and holiday wages.

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

28

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

7 19. As a result of the above-described unlawful requirements to work off the clock,
8 the failure to accurately record all hours worked and the other wage violations they endured at
9 Defendants' hands, Plaintiffs and the Class members were not properly paid all wages earned and
10 all wages owed to them by Defendants, including when working more than eight hours in any
11 given day and/or more than forty hours in any given week. As a result of Defendants' unlawful
12 policies and practices, Plaintiffs and Class members incurred overtime hours worked for which
13 they were not adequately and completely compensated, in addition to the hours they were
14 required to work off the clock at their regular rates.

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

24 21. Therefore, from at least four years prior to the filing of this lawsuit and continuing
25 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
26 hours worked and failing to pay minimum wages for all time worked, as required by California
27 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
28 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation

1 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
2 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
3 Labor Code § 510 and the corresponding sections of IWC Wage Orders. To the extent Defendants
4 paid Plaintiffs and the Class members bonuses and shift differentials and other forms of
5 remuneration above and beyond their hourly pay, upon information and belief Defendants
6 miscalculated and therefore underpaid any overtime they paid during these pay periods by failing
7 to include all forms of remuneration in the regular rate used to calculate and pay overtime.

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

15 23. More specifically, Plaintiffs worked shifts that entitled them to at least one meal
16 period, but Defendants' required Plaintiffs and the Class members to prioritize work over taking
17 proper meal periods. In fact, Plaintiffs and Class members were required to keep their walkie
18 talkies with them during meal and rest periods by Defendants, and Defendants therefore required
19 Plaintiffs and Class members to remain under Defendants' control when they were off the clock
20 and during meal periods. To the extent Defendants required Plaintiffs to work over ten hours on a
21 work shift, Defendants also failed to provide second meal periods and Defendants have produced
22 no evidence of payments for meal period violations under Labor Code 226.7. To the extent
23 Defendants have paid any such premiums, upon information and belief they failed to include all
24 forms of remuneration, including bonuses, wage differentials, and prevailing rates, in the regular
25 rate at which Defendants paid the premium. Plaintiffs have no recollection of agreeing to waive
26 any of their meal periods.

27 24. Defendants thus failed to provide all the legally required unpaid, off-duty meal
28 periods and all the legally required paid, off-duty rest periods to Plaintiffs and the other Class

1 members, as required by the applicable Wage Order and Labor Code. Plaintiffs and other Class
2 members were required to perform work as ordered by Defendants for more than five hours during
3 a shift without receiving compliant meal periods. Additionally, as addressed above, Defendants
4 followed a practice of requiring off the clock work in a manner that would impact when
5 Employees were to receive meal periods and rest breaks and required them to respond to work
6 calls and inquiries and other demands during breaks, thus leading to further violations.

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

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

- 25 (a) Class members were not provided full thirty-minute duty free meal periods
26 for work days in excess of five hours and were not compensated one hour's
27 wages in lieu thereof, all in violation of, among others, Labor Code §§
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226.7, 512, and the applicable Industrial Welfare Commission Wage Order(s);

- (b) Class members were not provided second full thirty-minute duty free meal periods for work days in excess of ten hours;
- (c) Class members were required to work through at least part of their daily meal period(s);
- (d) Meal periods were provided after five hours of continuous work during a shift; and
- (e) Class members were restricted in their ability to take a full thirty-minute meal period and were not permitted to leave their work premises during meal periods and were otherwise required to remain under Defendants' control during meal periods.

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

28. Defendants thus failed to authorize and permit duty-free ten minute rest breaks as required under the Labor Code and IWC Wage Orders. In fact, Defendants made no effort to even schedule or otherwise account for time for Plaintiffs and the Class members to use for duty-free, net ten minute rest breaks. This common and unlawful policy uniformly applied to the Employees during the relevant period, meaning Defendants' rest break policy was not to schedule or otherwise authorize and permit them. Plaintiffs and the Class members worked eight to twelve hours on an average shift, and were required to receive at least two rest breaks or three rest breaks

1 on shifts over ten hours. Given the work demands, and pressure from Defendants' management,
2 Plaintiffs and the Class members were compelled to not take rest breaks despite working
3 extended shifts. Defendants have produced no evidence of any payments for rest break violations
4 under Labor Code § 226.7. To the extent Defendants have paid any such premiums, upon
5 information and belief they failed to include all forms of remuneration, including bonuses, wage
6 differentials, prevailing wages and the like in the regular rate at which Defendants paid the
7 premium.

8 29. Defendants' uniformly applied policies and practices thus resulted in untimely and
9 shortened or on-duty rest breaks when they were authorized and permitted. Plaintiffs and the
10 Class members worked shifts of at least eight hours, which required at least two rest breaks, and
11 often worked shifts over ten hours, which required at least three rest breaks. Even on the
12 occasions when Defendants authorized and permitted Plaintiffs to take a first rest break, they
13 were not permitted to take a second or a third break, and those that were provided were often late
14 and generally interrupted by job duties and requirements.

15 30. During rest periods, employers must relieve employees of all duties and relinquish
16 control over how employees spend their time. Plaintiffs and the Class members were and are
17 under Defendants' control when they are working through rest breaks and remaining under
18 Defendants' control. Defendants have also provided either impermissibly shortened or untimely
19 meal and rest breaks to Plaintiffs and the Class members. Plaintiffs and the Employees in the
20 Class were thus not authorized and permitted to take lawful rest periods, were systematically
21 required by Defendants to work through or during breaks, and were not provided with one hour's
22 wages in lieu thereof. They were required to remain on-duty during breaks or portions of their
23 breaks, thus making them either untimely or shortened and on-duty, and they were also prevented
24 from leaving the worksite and otherwise remain under Defendants' control during rest breaks
25 under Defendants' uniformly applied policies and practices. Rest period violations therefore arose
26 in one or more of the following manners:

- 27 (a) Class members were required to work without being provided a minimum
28 ten minute rest period for every four hours or major fraction thereof worked

1 and were not compensated one hour of pay at their regular rate of
2 compensation for each workday that a rest period was not provided, and to
3 the extent Defendants paid any premiums, they failed to include all forms of
4 remuneration in the regular rate used to calculate and pay them.

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

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

10 31. From at least four years prior to the filing of this lawsuit and continuing to the
11 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
12 deducting the Employees' earned wages, including by requiring off the clock work during breaks
13 and before and after work shifts and by miscalculating the regular rate and accordingly
14 underpaying overtime wages and meal and rest break premiums. Moreover, Defendants
15 unlawfully made deductions labeled "401k%" on Plaintiffs' wage statements. On information and
16 belief, these deductions correspond to deductions purportedly incurred by Plaintiffs for
17 participation in Defendants' 401k Plan. However, Plaintiffs never authorized these deductions
18 from their wages in accordance with Labor Code § 224. By not compensating Employees for all
19 hours worked at the correct rates, Defendants also unlawfully deducted wages earned by and owed
20 to Plaintiffs and the Class members, in violation of Labor Code § 221.

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

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

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

27 34. As a result of these illegal policies and practices, Defendants also engaged in and
28 enforced the following additional unlawful practices and policies against Plaintiffs and the Class

members they seek to represent:

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

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

1 pay all overtime hours at the correctly calculated overtime premium rate.

2 36. Defendants thus provided Plaintiffs and the Class members with wage statements
3 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
4 As detailed above, Plaintiffs and the Class members were provided with unlawful wage statements
5 that failed to reflect all hours worked and failed to pay for all overtime hours or failed to pay
6 overtime wages at the correct overtime premium rate, and Defendants miscalculated meal and rest
7 break premiums, and sick time if and when they did pay them. Defendants followed this unlawful
8 policy and practice even though both Plaintiffs and Defendants were aware that Plaintiffs and the
9 Class members worked more total hours than were reflected on the wage statements, including
10 overtime hours, and were underpaid by regular rate miscalculation. Plaintiffs and the Employees
11 in the Class were unable to discern from their wage statements alone the actual hours they worked
12 in total during a pay period and the rates they were paid for those hours worked.

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

22 38. Defendants also required Plaintiffs and the Class members to work hours off the
23 clock for which they were not compensated. They were required to endure off the clock work
24 addressed above, including during interrupted or otherwise on-duty meal and rest periods and were
25 not provided with sick pay and supplemental sick leave and were subjected to systematic off the
26 clock work. Defendants also failed to pay all overtime premium wages owed for work conducted
27 on a work shift and a workday or failed to pay it at the correct rate, as addressed above. Therefore,
28 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to

1 Plaintiffs and other similarly situated Employees at the time of their termination or within seventy-
2 two hours of their resignation, as required by California law, including Labor Code § 203.

3 39. Additionally, from at least four years prior to the filing of this lawsuit and
4 continuing to the present, Defendants have regularly required Plaintiffs and the Class members to
5 incur necessary business expenses in the course of performing their required job duties without
6 reimbursement. These included the cell phone-related expenses Plaintiffs incurred in using the
7 Whole Foods App to check on their schedules and to communicate with Defendants' management.
8 Defendants also failed to maintain or pay to maintain the work uniforms of Plaintiffs and class
9 members. Class members must be reimbursed for these necessary business expenses under Labor
10 Code § 2802, and Defendants systematically failed to do so.

11 40. In light of the foregoing, Plaintiffs and the Employees in the Class bring this action
12 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4,
13 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,
14 1194.2 1197, 1198, 1198.5, 1199, 2802, 2810.5, and California Code of Regulations, Title 8,
15 section 11000 *et seq.*

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

20 **CLASS ALLEGATIONS**

21 42. Plaintiffs bring this class action on behalf of themselves and all others similarly
22 situated pursuant to Code of Civil Procedure § 382. Plaintiffs seek to represent a Class (or "the
23 Class" or "Class members") defined as follows: "All individuals employed by Defendants at any
24 time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as
25 determined by the Court ("the Class Period"), and who have been employed as non-exempt,
26 hourly employees within the State of California." This includes assistant meat managers,
27 produce managers, grocery team members, cashiers, and those in similar and related positions
28 in connection with grocery and retail services provided to Defendants' customers throughout

California. Further, Plaintiffs seek to represent the Subclasses composed of and defined as follows:

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

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

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

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

e. Subclass 5. Reporting Time Pay Subclass: All Class members who were not compensated reporting time pay.

f. Subclass 6. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

g. Subclass 7. Unauthorized Deductions from Wages Subclass. All Class members who were subject to Defendants' policy and/or practice of deducting wages earned from their pay, including by requiring off the clock work.

h. Subclass 8. Failure to Timely Pay Wages Twice Monthly Subclass. All Class members who were subject to Defendants' policy and practice of not timely paying all wages earned when they were due and payable at least twice monthly.

i. Subclass 9. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

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

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

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

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

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

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

1 **A. Numerosity**

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

8 **B. Commonality**

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

- 15 a. Whether Defendants failed to pay Employees minimum wages;
16 b. Whether Defendants failed to pay Employees wages for all hours worked;
17 c. Whether Defendants failed to pay Employees overtime as required under Labor
18 Code § 510;
19 d. Whether Defendants paid reporting time pay under the applicable wage order and 8
20 CCR § 11160(5);
21 e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
22 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
23 premium pay in lieu thereof;
24 f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
25 Orders, by failing to authorize and permit Employees to take requisite rest breaks,
26 or provide premium pay in lieu thereof;
27 g. Whether Defendants violated Labor Code § 226(a) by providing Employees with
28 inaccurate wage statements and wage statements that omitted many of the Section

226(a) requirements.

- h. Whether Defendants violated Labor Code § 221;
- i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- j. Whether Defendants' conduct was willful;
- k. Whether Defendants violated Labor Code § 226 and § 1174 and §1198 and the IWC Wage Orders by failing to maintain accurate records of Class members' earned wages and work periods;
- l. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;
- n. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business expenses incurred by Employees;
- o. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not providing employees with all required sick days and COVID-19 supplemental sick leave;
- p. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- q. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- r. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

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

1 those of the other Class members.

2 **D. Adequacy of Representation**

3 49. Plaintiffs will fairly and adequately represent and protect the interest of the
4 Employee Class members. Counsel who represents Plaintiffs and the Employees in the Class are
5 experienced and competent in litigating employment class actions.

6 **E. Superiority of Class Action**

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

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

23 52. Class action treatment will allow those persons similarly situated to litigate their
24 claims in the manner that is most efficient and economical for the parties and the judicial system.
25 Plaintiffs are unaware of any difficulties in managing this case that should preclude class
26 treatment. Plaintiffs contemplate the eventual issuance of notice to the proposed Class members
27 that would set forth the subject and nature of the instant action. The Defendants' own business
28 records can be utilized for assistance in the preparation and issuance of the contemplated notices.

1 To the extent that any further notice is required additional media and/or mailings can be used.

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

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

17 **FIRST CAUSE OF ACTION**
18 **FAILURE TO PAY MINIMUM WAGES**
19 **(Against All Defendants)**

20 55. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
21 full herein.

22 56. Defendants failed to pay Employees minimum wages for all hours worked.
23 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
24 would work hours and not receive wages, including as alleged above in connection with off the
25 clock work, including all the time required to remain on duty and under Defendants' control
26 during breaks and due to the work demands placed upon them by Defendants' management and
27 by paying what should have been overtime hours as regular hours. Defendants' uniformly applied
28 policies required systematic off the clock work and underpayment of all wages owed to

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

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

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

22 59. The minimum wage provisions of California Labor Code are enforceable by private
23 civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to
24 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
25 overtime compensation applicable to the employee is entitled to recover in a civil action the
26 unpaid balance of the full amount of this minimum wage or overtime compensation, including
27 interest thereon, reasonable attorney's fees and costs of suit."
28

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

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

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

20 63. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
21 1197.1, Plaintiffs and Class members are entitled to recover a penalty of \$100.00 for the initial
22 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
23 pay each employee minimum wages.

24 64. Pursuant to California Labor Code § 1194.2, Plaintiffs and Class members are
25 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
26 interest thereon.

27 65. Defendants have the ability to pay minimum wages for all time worked and have
28 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this

indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

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

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

67. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

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

69. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and

1 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
2 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular
3 hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40)
4 hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any
5 one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12)
6 hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of
7 work in a workweek.

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

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

26 72. Therefore, Employees were not properly compensated, nor were they paid overtime
27 rates for hours worked in excess of eight hours in a given day, and/or forty hours in a given week.
28 Based on information and belief, Defendants did not make available to Employees a reasonable

1 protocol for correcting time records when Employees worked overtime hours or to fix incorrect
2 time entries or those that Defendants unlawfully under-recorded to the Employee's detriment.
3 Defendants have also violated these provisions by requiring Plaintiffs and other similarly situated
4 Class members to work through meal periods when they were required to be clocked out or to
5 otherwise work off the clock to complete their daily job duties.

6 73. Defendants' failure to pay Plaintiffs and the Class members the unpaid balance of
7 regular wages owed and overtime compensation for all hours worked, as required by California
8 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
9 IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly calculate the
10 regular rate used to calculate and pay overtime, and meal and rest premiums, as addressed above.

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

24 75. Defendants' failure to pay compensation in a timely fashion also constituted a
25 violation of California Labor Code § 204, which requires that all wages shall be paid
26 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
27 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
28 and overtime compensation earned by Employees. Each such failure to make a timely payment of

1 compensation to Employees constitutes a separate violation of California Labor Code § 204.

2 76. Employees have been damaged by these violations of California Labor Code §§
3 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
4 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
5 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
6 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
7 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
8 any order or ruling of the commission.”

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

16 **THIRD CAUSE OF ACTION**

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

18 **(Against All Defendants)**

19 78. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
20 full herein.

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

27 80. Defendants failed to provide Employees with meal periods as required under the
28 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required

1 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
2 provided them after Employees worked beyond the fifth hour of their shifts or Employees
3 otherwise had them shortened and interrupted by work demands and requirements to perform off
4 the clock work and remain under Defendants' control. Furthermore, upon information and belief,
5 on the occasions when Employees worked more than ten hours in a given shift, they did so
6 without receiving a second uninterrupted thirty-minute meal period as required by law.

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

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

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

28

1 **FOURTH CAUSE OF ACTION**

2 **REST-BREAK PERIOD LIABILITY UNDER LABOR CODE § 226.7**

3 **(Against All Defendants)**

4 84. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
5 full herein.

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

9 86. Employees consistently worked consecutive four hour shifts and were generally
10 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
11 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
12 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
13 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
14 breaks of not less than ten minutes for each consecutive four hour shifts. Defendants made no
15 effort to authorize and permit Plaintiffs and the Class members to take lawful rest breaks.
16 Employees were often required to work or to otherwise remain under Defendants' control during
17 rest periods, including by responding to work requirements, being prohibited from leaving the
18 worksites, and had breaks provided untimely as a result of the above described off the clock work.

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

23 88. Defendants, and each of them, have therefore intentionally and improperly denied
24 rest periods to Plaintiffs and the Class members in violation of Labor Code §§ 226.7 and 512 and
25 paragraph 12 of the applicable IWC Wage Orders.

26 89. Defendants failed to authorize and permit Plaintiffs and the Class members to take
27 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
28 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed

1 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs
2 12 and 20 of the applicable IWC Wage Orders. To the extent Defendants paid any rest break
3 premiums, they upon information and belief, underpaid them by miscalculating the regular rate of
4 compensation by not including all forms of remuneration in it. Defendants thus failed to
5 compensate the Employees in the Class for each rest period not provided or inadequately
6 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC
7 Wage Order.

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

13 **FIFTH CAUSE OF ACTION**

14 **FAILURE TO PAY REPORTING TIME PAY UNDER WAGE ORDER 16-2001,**

15 **8 CCR § 11160(5)**

16 **(Against All Defendants)**

17 91. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
18 full herein.

19 92. Wage Order 16-2001 provides that “[e]ach workday an employee is required to
20 report for work and does report, but is not put to work or is furnished less than half said employee's
21 usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work,
22 but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular
23 rate of pay, which shall not be less than the minimum wage.” Cal. Code Regs., tit. 8, § 11160(5)(A).

24 93. As set forth herein, Plaintiffs and Employees were required to report for work and
25 were sent home before half of their scheduled days’ work. Defendants failed to pay Plaintiffs and
26 Employees for half of their scheduled days’ work in violation of the applicable Wage Order.

27 94. As a direct and proximate results of Defendants' actions as set forth herein, Plaintiffs
28 and the Class have been damaged in that Plaintiffs and the Class have not been paid all required

1 reporting time pay.

2 95. Consequently, pursuant to the California Labor Code, including Labor Code §§
3 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
4 paragraphs 5(A-D), Defendants are liable to Employees for the full amount of all their unpaid
5 wages, including reporting time pay, with interest, plus their reasonable attorneys' fees and costs,
6 as well as the assessment of any statutory penalties against Defendants, and each of them, and
7 any additional sums as provided by the Labor Code and/or other statutes.

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

11 96. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
12 full herein.

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

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

27 99. Throughout the liability period, Defendants intentionally failed to furnish to
28 Plaintiffs and the Class members, upon each payment of wages, itemized statements accurately

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

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

27 101. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
28 are required "to pay each employee, on the established payday for the period involved, not less

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

7 102. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
8 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
9 Class suffered injuries, including among other things confusion over whether they received all
10 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
11 them to make mathematical computations to analyze whether the wages paid in fact compensated
12 them correctly for all hours worked.

13 103. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
14 IWC Wage Order, Plaintiffs and the Employee Class members are entitled to recover the greater
15 of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs
16 and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
17 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to
18 an award of costs and reasonable attorneys’ fees.

19 **SEVENTH CAUSE OF ACTION**
20 **VIOLATION OF LABOR CODE § 221**
21 **(Against All Defendants)**

22 104. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
23 full herein.

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

106. Defendants unlawfully received and/or collected wages from the Employees in the Class by requiring off the clock work, by miscalculating overtime, and by not paying one hour of pay at the regular rate of compensation for every meal and rest period violation endured by Plaintiffs and the other Class members, as alleged above. Moreover, Defendants unlawfully made deductions labeled “401K%” on Plaintiffs’ wage statements. On information and belief, these deductions correspond to participation in Defendants’ retirement plan purportedly incurred by Plaintiffs. However, Plaintiffs never authorized these deductions from their wages in accordance with Labor Code section 224. By not compensating Employees for all hours worked and meal and rest period premiums, Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

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

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

108. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

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

1 between the 16th and the last day of the month between the 1st and 10th day of the following month.
2 Defendants similarly failed to pay all wages earned by not more than seven calendar days
3 following the close of the payroll period.

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

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

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

23 **NINTH CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE § 203**

25 **(Against All Defendants)**

26 113. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
27 full herein.

28 114. Plaintiff Brooks and numerous Class members are no longer employed by

1 Defendants; they either quit Defendants' employ or were fired therefrom.

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

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

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

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

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

1 **TENTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

4 120. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
5 full herein.

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

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

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

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

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

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

23 **ELEVENTH CAUSE OF ACTION**

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

25 **(Against All Defendants)**

26 127. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
27 full herein.

28 128. Plaintiffs are informed and believe and based thereon allege that throughout the

1 period applicable, Defendants required Plaintiffs and the Class members to pay for necessary work
2 related expenses they incurred. These included the cell phone-related expenses Plaintiffs incurred
3 in obtaining information on their time entries and other required information on Defendants'
4 timekeeping and scheduling applications, and responding to calls from management. This also
5 included uniform maintenance costs. Plaintiffs and the Class members must be reimbursed for
6 these necessary business expenses under Labor Code § 2802 and Defendants systematically failed
7 to do so.

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

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

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

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1 **TWELFTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

4 132. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
5 full herein.

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

11 134. Plaintiffs are a “person” within the meaning of Business & Professions Code
12 § 17204, have suffered injury, and therefore have standing to bring this cause of action for
13 injunctive relief, restitution, and other appropriate equitable relief.

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

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

1 comply with minimum labor standards.

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

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

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

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

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

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

1 Defendants have unlawfully failed to pay.

2 **RELIEF REQUESTED**

3 WHEREFORE, Plaintiffs pray for the following relief:

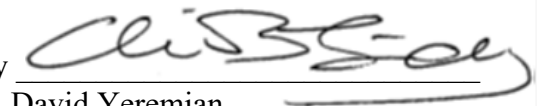
- 4 1. For an order certifying this action as a class action;
- 5 2. For compensatory damages in the amount of the unpaid minimum wages for work
6 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
7 the filing of this action, as may be proven;
- 8 3. For liquidated damages in the amount equal to the unpaid minimum wage and
9 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 10 4. For compensatory damages in the amount of all unpaid wages, including overtime
11 and double-time pay, as may be proven;
- 12 5. For compensatory damages in the amount of the hourly wage made by Employees
13 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
14 years prior to the filing of this action, as may be proven;
- 15 6. For compensatory damages in the amount of the hourly wage made by Employees
16 for each day requisite rest breaks were not provided or were deficiently provided where no
17 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
18 be proven;
- 19 7. For compensatory damages in the amount of the hourly wage made by Employees
20 for shifts where no reporting time pay was paid from at least four (4) years prior to the filing of
21 this action, as may be proven;
- 22 8. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 23 9. For restitution and/or damages and penalties for Defendants' failure to pay all
24 wages due twice monthly under Labor Code § 204, as may be proven;
- 25 10. For restitution and/or damages for all amounts unlawfully withheld from the wages
26 for all class members in violation of Labor Code § 221, as may be proven;
- 27 11. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
28 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

12. For penalties pursuant to Labor Code § 1174.5, as may be proven;
13. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;
14. For damages and restitution for failure to reimburse all reasonable and necessary business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;
15. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;
16. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;
17. For other wages and penalties under the Labor Code as may be proven;
18. For all general, special, and incidental damages as may be proven;
19. For an award of pre-judgment and post-judgment interest;
20. For an award providing for the payment of the costs of this suit;
21. For an award of attorneys' fees; and
22. For such other and further relief as this Court may deem proper and just.

DATED: August 8, 2024

D.LAW, INC.

By



David Yeremian
Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Plaintiffs Clifford Brooks Sr.
and William John Hastings and the putative
class

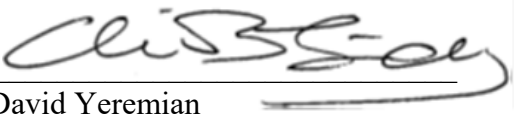
DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

DATED: August 8, 2024

D.LAW, INC.

By



David Yeremian
Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Plaintiffs Clifford Brooks Sr.
and William John Hastings and the putative
class