

D.LAW, INC.
Emil Davtyan (SBN 299363)
Emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
Natalie Haritounian (SBN 324318)
n.haritounian@d.law
Matthew J. Carraher (SBN 346860)
m.carraher@d.law
450 N. Brand Blvd, Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
11/8/2024 2:59 PM
By: Shuai Zhou, DEPUTY

Attorneys for Plaintiff GLADYS FAYTH BAUTISTA,
on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

GLADYS FAYTH BAUTISTA, an
individual on behalf of herself and all others
similarly situated,

Plaintiff,

vs.

BROOKSIDE HEALTHCARE, a business
entity of unknown form; REDBROOK
HEALTHCARE ASSOCIATES LLC, a
Nevada limited liability company doing
business as BROOKSIDE HEALTHCARE
CENTER; THE ENSIGN GROUP, INC.; a
Delaware Corporation; FLAGSTONE
HEALTHCARE CENTRAL, LLC, a Nevada
limited liability company; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CIVSB2427217

CLASS ACTION

Assigned for All Purposes To:
Hon. David E. Driscoll
Dept.: S22

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Failure to Pay Vacation Wages;
6. Violation of Labor Code § 226(a);
7. Violation of Labor Code § 203;
8. Violation of Labor Code § 204;
9. Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5;
10. Failure to Reimburse Necessary Business Expenses § 2802;
11. Violation of Business & Professions Code § 17200 *et seq.*; and
12. Penalties under PAGA, Labor Code § 2698

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff GLADYS FAYTH BAUTISTA (“Plaintiff”) brings this action on behalf of herself and the Class Members who are defined as “all current and former employees within the State of California who, at any time from four (4) years prior to the filing of this lawsuit, are or were employed as non-exempt hourly employees by Defendants BROOKSIDE HEALTHCARE, a business entity of unknown form; REDBROOK HEALTHCARE ASSOCIATES LLC, a Nevada limited liability company doing business as BROOKSIDE HEALTHCARE CENTER; THE ENSIGN GROUP, INC., a Delaware corporation; FLAGSTONE HEALTHCARE CENTRAL, LLC, a Nevada limited liability company; and DOES 1 through 50 (all defendants being collectively referred to herein as “Defendants”).

2. Plaintiff alleges that Defendants, and each of them, violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and the California Business & Professions Code, and seeks redress for these violations.

3. Upon information and belief, Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3) endured similar violations at the hands of Defendants as the other Class Members who served in similar and related positions.

THE PARTIES

A. The Plaintiff

4. Plaintiff GLADYS FAYTH BAUTISTA resides in California, during the time period relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee within the State of California.

B. The Defendants

5. Defendant BROOKSIDE HEALTHCARE is a business entity of unknown form and has been the employer listed on the wage statements and employment records issued to Plaintiff during the relevant time period that Plaintiff was employed with Defendants. Defendant BROOKSIDE HEALTHCARE, upon information and belief, employed Plaintiff and the Class Members in California, including at Defendants’ offices and facilities in Redlands, California, and

1 throughout California, and conducts business throughout California.

2 6. Defendant REDBROOK HEALTHCARE ASSOCIATES LLC, dba BROOKSIDE
3 HEALTHCARE CENTER is a Nevada limited liability company and is registered with the
4 California Secretary of State. Defendant REDBROOK HEALTHCARE ASSOCIATES LLC, dba
5 BROOKSIDE HEALTHCARE CENTER has been the employer listed on the employment records
6 issued to Plaintiff during the relevant time period that Plaintiff was employed with Defendants.
7 REDBROOK HEALTHCARE ASSOCIATES LLC, dba BROOKSIDE HEALTHCARE
8 CENTER, upon information and belief, employed Plaintiff and the Class Members in California,
9 including at Defendants' offices and facilities in Redlands, California, and throughout California,
10 and conducts business throughout California.

11 7. Defendant THE ENSIGN GROUP, INC. is a Delaware Corporation and is
12 registered with the California Secretary of State. Defendant THE ENSIGN GROUP, INC. has
13 been the employer listed on the employment records issued to Plaintiff during the relevant time
14 period that Plaintiff was employed with Defendants. THE ENSIGN GROUP, INC., upon
15 information and belief, employed Plaintiff and the Class Members in California, including at
16 Defendants' offices and facilities in Redlands, California, and throughout California, and conducts
17 business throughout California.

18 8. Defendant FLAGSTONE HEALTHCARE CENTRAL, LLC, is a Nevada limited
19 liability company and is registered with the California Secretary of State. Defendant has been the
20 employer listed on the employment records issued to Plaintiff during the relevant time period that
21 Plaintiff was employed with Defendants. FLAGSTONE HEALTHCARE CENTRAL, LLC, upon
22 information and belief, employed Plaintiff and the Class Members in California, including at
23 Defendants' offices and facilities in Redlands, California, and throughout California, and conducts
24 business throughout California.

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

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

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

14 11. Whenever and wherever reference is made in this Complaint to any act by a
15 Defendant or Defendants, such allegations and references shall also be deemed to mean the acts
16 and failures to act of each Defendant acting individually, jointly, and severally.

17 12. Whenever and wherever reference is made to individuals who are not named as
18 Defendants in this Complaint but were agents, servants, employees and/or supervisors of
19 Defendants, such individuals at all relevant times acted on behalf of Defendants within the scope
20 of their employment.

21 **JURISDICTION AND VENUE**

22 13. This Court has jurisdiction over this Action pursuant to California Code of Civil
23 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
24 as a Class Action on behalf of similarly situated Class Members of Defendants pursuant to
25 California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial
26 district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief,
27 the obligations and liabilities giving rise to this lawsuit occurred in part in San Bernardino County.
28 Defendants maintain and operate facilities in San Bernardino County and employed Plaintiff and

1 other Class Members in San Bernardino County, while doing business throughout California.

2 **FACTUAL BACKGROUND**

3 14. Class Members, or some of them, consistently worked at Defendants behest
4 without, at times, being paid all wages due. Class Members, or some of them, were, at times either
5 not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular
6 and overtime rates. Plaintiff also contends that Defendants failed, at times, to pay Class Members,
7 or some of them, all wages due and owing, including by requiring off the clock work, failing to
8 pay out vacation days, failing to incorporate non-discretionary bonuses and/or shift differential
9 pay into the regular rate of pay used to calculate and pay for overtime pay, sick pay, and meal and
10 rest break premiums, failing to provide meal and rest breaks, failing to furnish accurate wage
11 statements, failing to timely pay wages including final wages, failing to maintain accurate records,
12 and failing to reimburse necessary business expenses all in violation of various provisions of the
13 California Labor Code and applicable Wage Orders.

14 15. During the course of Class Members' employment with Defendants, they were, at
15 times, not paid all wages they were owed, including for all work performed resulting in off the
16 clock work. Defendants, at times, required Class Members, or some of them, to perform pre-shift
17 and post-shift off the clock work. For instance, before clocking in, Class Members endured pre-
18 shift off the clock work because Defendants required Class Members to wait several minutes to be
19 admitted to the job site upon arrival, and upon admittance Class Members were required to go
20 through COVID-19 screenings before clocking in. Moreover, Class Members also endured post-
21 shift off the clock work because they were instructed to clock out at the end of their scheduled
22 shift, but they were required to continue working until employees from the next shift arrived.
23 Furthermore, Class Members were required to use personal cell phones outside of work hours to
24 communicate with supervisors and coworkers.

25 16. Defendants also failed to pay Class Members all wages due and owing because
26 Defendants failed to incorporate non-discretionary, performance-based bonuses and/or shift
27 differential pay into the regular rate of pay. Contrary to the requirements of the Labor Code and
28 IWC Wage Orders under California law, Defendants did not incorporate these non-discretionary

1 bonuses and/or shift differential pay paid to the Class Members into the regular rate of pay
2 Defendants used to calculate and pay for overtime pay, sick pay, and meal and rest break
3 premiums.

4 17. By implementing policies, programs, practices, procedures and protocols which
5 resulted in off the clock work and the failure to incorporate non-discretionary bonuses and/or shift
6 differential pay into the regular rate of pay, Defendants' willful actions, at times, resulted in the
7 systematic underpayment of wages to Class Members, or some of them, including underpayment
8 of overtime pay to Class Members over the relevant time period. For example, the above described
9 off the clock work addressed above caused Plaintiff to begin receiving overtime pay later than
10 they should have.

11 18. As a result of the above described requirements to work off the clock and the
12 failure to incorporate non-discretionary bonuses and/or shift differential pay into the regular rate
13 of pay, and the other wage violations they endured at Defendants' hands, Class Members, or some
14 of them, were, at times, not properly paid all wages earned and all wages owed to them by
15 Defendants, including when working more than eight (8) hours in any given day and/or more than
16 forty (40) hours in any given week.

17 19. As a result of Defendants' unlawful policies and practices, Class Members, or some
18 of them, incurred overtime hours worked for which they were, at times, not adequately and
19 completely compensated, in addition to the hours they were required to work off the clock. To the
20 extent applicable, Defendants also failed to pay Class Members at an overtime rate of 1.5 times the
21 regular rate for the first eight hours of the seventh consecutive work day in a week and overtime
22 payments at the rate of 2 times the regular rate for hours worked over eight (8) on the seventh
23 consecutive work day, as required under the Labor Code and applicable IWC Wage Orders.

24 20. Therefore, from at least four (4) years prior to the filing of this lawsuit and
25 continuing to the present, Defendants had a consistent policy or practice of failing, at times, to pay
26 Class Members, or some of them, for all hours worked, and failing, at times, to pay minimum
27 wages for all time worked, as required by California law. Defendants thus failed to pay Class
28 Members, or some of them, at least minimum wages for all the time they worked for Defendants

1 in violation of the Labor Code and applicable IWC Wage Orders as the actual times when Class
2 Members were under the control and direction of Defendants was under reported in the hours
3 reflected on the timekeeping records. Furthermore, Defendants' willful actions resulted in the
4 systematic underpayment of wages to Class Members, including underpayment of overtime pay to
5 Class Members over a period of time.

6 21. Therefore, from at least four (4) years prior to the filing of this lawsuit and
7 continuing to the present, Defendants had a consistent policy or practice of failing, at times, to pay
8 Class Members, or some of them, for all hours worked. Also, from at least four (4) years prior to
9 the filing of this lawsuit and continuing to the present, Defendants also had a consistent policy or
10 practice of failing to pay Class Members, or some of them, their true and correct overtime
11 compensation at premium overtime rates for all hours worked in excess of eight (8) hours a day
12 and/or forty (40) hours a week, and double-time rates for all hours worked in excess of twelve (12)
13 hours a day, in violation of Labor Code § 510 and the corresponding sections of IWC Wage
14 Orders.

15 22. Additionally, Defendants failed, at times, to provide all the legally required unpaid,
16 off-duty meal periods and all the legally required paid, off-duty rest periods to Class Members, or
17 some of them, as required by the applicable Wage Order and Labor Code. Class Members were
18 required to perform work as ordered by Defendants for more than five (5) hours during a shift but
19 were, at times, required to do so without receiving a lawful and timely meal break. In addition to
20 untimely meal periods, Defendants, at times, also required Class Members, or some of them, to
21 respond to work demands. Defendants placed their needs over Class Members lawful meal and
22 rest breaks and this resulted in Class Members often having to work through their scheduled meal
23 and/or rest breaks, or otherwise taking shortened ones, because the demands of the job would not
24 avail them the opportunity to take a lawfully uninterrupted and off duty meal and/or rest break.

25 23. On the occasions when Class Members, or some of them, worked over 10 hours in
26 a shift, Defendants also failed, at times, to provide them with a second, uninterrupted, timely and
27 duty-free meal period. As a result, Defendants' failure to provide Class Members with all legally
28 required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is

1 and will be evidenced by Defendants' business records, or lack thereof. Defendants also, at times,
2 failed to pay Class Members, or some of them, "premium pay," i.e. one hour of wages at each
3 Class Member's effective hourly rate of pay, for each meal period or rest break that Defendants
4 failed to provide or deficiently provided.

5 24. Therefore, for at least four years prior to the filing of this action and through to the
6 present, Defendants have, at times, regularly required Class Members, or some of them, to work
7 shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not
8 less than thirty (30) minutes, and shifts in excess of (10) hours without providing them with
9 second meal periods of not less than thirty minutes; nor did Defendants pay Class Members
10 "premium pay," i.e. one hour of wages at each Class Member's effective hourly rate of pay, for
11 each meal period that Defendants failed to provide or deficiently provided.

12 25. Meal period violations thus occurred in one or more of the following manners:

- 13 (a) Class Members, or some of them, were, at times, not provided full thirty-
14 minute duty free meal periods for work days in excess of five (5) hours and
15 were not compensated one (1) hour's wages in lieu thereof, all in violation
16 of, among others, Labor Code §§ 226.7, 512, and the applicable Industrial
17 Welfare Commission Wage Order(s);
- 18 (b) Class Members, or some of them, were, at times, not provided second full
19 thirty-minute duty free meal periods for work days in excess of ten (10)
20 hours;
- 21 (c) Class Members, or some of them, were, at times, required to work through
22 at least part of their daily meal period(s);
- 23 (d) Meal periods were, at times, not provided after five (5) hours of continuous
24 work during a shift; and
- 25 (e) Class Members, or some of them, were restricted in their ability to take a
26 full thirty-minute meal period.

27 26. Class Members, or some of them, were, at times, also not authorized and permitted
28 to take lawful rest periods, were systematically required by Defendants, at times, to work through

1 or during breaks and were not provided with one (1) hour's wages in lieu thereof. Class Members,
2 or some of them, were restricted, at times, in their ability to take their full ten (10) minutes net rest
3 time or were otherwise not provided with duty-free rest periods. Therefore, from at least four years
4 prior to the filing of this lawsuit and continuing to the present, Defendants have, at times, failed to
5 provide Class Members, or some of them, with paid rest breaks of not less than ten minutes for
6 every work period of four or more consecutive hours, and shifts in excess of ten hours without
7 providing them with third rest periods of not less than ten minutes; or major fraction thereof, nor
8 did Defendants pay Class Members premium pay for each day on which requisite rest breaks were
9 not provided or were deficiently provided.

10 27. Rest period violations therefore arose in one or more of the following manners:

- 11 (a) Class Members, or some of them, were, at times, required to work without
12 being provided a minimum ten (10) minute rest period for every four (4)
13 hours or major fraction thereof worked and were not compensated one (1)
14 hour of pay at their regular rate of compensation for each workday that a
15 rest period was not provided;
- 16 (b) Class Members, or some of them, were, at times, not provided a third ten-
17 minute rest period for work days in excess of ten hours;
- 18 (c) Class Members, or some of them, were, at times, not authorized and
19 permitted to take timely rest periods for every four hours worked, or major
20 fraction thereof; and
- 21 (d) Class Members, or some of them, were required, at times, to remain on-
22 duty during rest periods or otherwise had their rest periods interrupted by
23 work demands.

24 28. Defendants also consistently failed, at times, to issue accurate itemized wage
25 statements as required by Labor Code § 226(a). Specifically, the wage statements failed to include
26 the total hours worked by the employees and all applicable hourly rates in effect during the pay
27 period and therefore the wage statements do not comply with Labor Code § 226(a)(2) and §
28 226(a)(9). Additionally, the wage statements given to Class Members, or some of them, failed to

1 accurately account for unpaid wages and overtime because Class Members' actual hours worked
2 were under-reported due to off the clock work. Moreover, the wage statements given to Class
3 Members, or some of them, failed to incorporate non-discretionary bonuses and/or shift
4 differential pay into the regular rate of pay used to calculate and pay overtime compensation.
5 Additionally, the wage statements given to Class Members, or some of them, failed, at times, to
6 accurately account for premium pay for deficiently provided meal periods and rest breaks.

7 29. From at least four (4) years prior to filing this lawsuit and continuing to the present,
8 Defendants have, at times, thus also had a consistent policy of failing to pay all wages owed to
9 Class Members, or some of them, at the time of their termination of within seventy-two (72) hours
10 of their resignation, as required by California wage-and-hour laws. Specifically, Defendants
11 provided Plaintiff a final check that did not include all of Plaintiff's accrued vacation time and
12 paid time off. Additionally, Plaintiff and Class Members were not paid all regular and overtime
13 wages because Defendants failed to pay for all hours worked by requiring off the clock work and
14 failing to incorporate non-discretionary bonuses and/or shift differential pay into the regular rate
15 of pay used to calculate and pay for overtime pay, sick pay, and meal and rest break premiums.
16 Moreover, Defendants, at times, failed to pay premium wages owed for unprovided meal periods
17 and rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages
18 within the required time was willful within the meaning of Labor Code § 203.

19 30. Additionally, from at least four (4) years prior to the filing of this lawsuit and
20 continuing to the present, Defendants have regularly required Class Members to incur business
21 expenses in the course of performing their required job duties for Defendants including for cell
22 phone expenses and tools and equipment. Upon information and belief, Class Members incurred
23 similar costs. These expenses incurred by Class Members were necessary and required of them in
24 performing their assigned job duties, but Defendants failed to reimburse Class Members for all
25 such necessary expenditures, thus entitling them to reimbursement according to proof as required
26 under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

27 31. In light of the foregoing, Plaintiff and Class Members bring this action pursuant to,
28 *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 248, 510, 512, 558,

558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, 2698 et seq., and California Code of Regulations, Title 8, section 11000 *et seq.*

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

CLASS ALLEGATIONS

33. Plaintiff seeks 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 Class Member'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 Class Members 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 Class Member's regular rate of pay in lieu thereof.

e. Subclass 5. Vacation Pay Subclass. All Class Members who were not paid for accrued vacation time upon separation.

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. 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

1 termination.

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

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

8 j. Subclass 10. Expense Reimbursement Subclass. All Class Members who incurred
9 necessary and reasonable expenses in connection with performing their job duties for Defendants
10 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

11 k. Subclass 11. UCL Subclass. All Class Members who are owed restitution as a
12 result of Defendants' business acts and practices, to the extent such acts and practices are found to
13 be unlawful, deceptive, and/or unfair.

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

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

27 36. This action has been brought and may properly be maintained as a class action
28 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community

of interest in litigation and proposed class is easily ascertainable.

A. Numerosity

37. The potential members of the class as defined are so numerous that joinder of all the member of the class is impracticable. While the precise number of class member has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the time period relevant to this lawsuit, hundreds of employees who satisfy the Class definition within the State of California.

38. Accounting for employee turnover during the relevant time period increases this number substantially. Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all Class Members.

B. Commonality

39. There are questions of law and fact common to the Class that predominates over any questions affecting only individual Class Members. These common questions of law and fact include:

- a. Whether Defendants failed to pay Class Members minimum wages;
- b. Whether Defendants failed to pay Class Members wages for all hours worked;
- c. Whether Defendants failed to pay Class Members overtime as required under Labor Code § 510;
- d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Class Members with requisite meal periods or premium pay in lieu thereof;
- e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Class Members to take requisite rest breaks or provide premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code § 226(a) by providing Class Members with inaccurate wage statements;
- g. 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;

- 1 h. Whether Defendants' conduct was willful;
- 2 i. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
- 3 Orders by failing to maintain accurate records of Class Members' earned wages and
- 4 work periods;
- 5 j. Whether Defendants violated Labor Code § 1194 by failing to compensate all Class
- 6 Members during the relevant time period for all hours worked, whether regular or
- 7 overtime;
- 8 k. Whether Defendants violated Labor Code § 204 by failing to timely pay wages;
- 9 l. Whether Defendants violated Labor Code § 2802 by failing to reimburse all
- 10 necessary business expenses Defendants required them to incur in performing their
- 11 job duties;
- 12 m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 13 n. Whether Class Members are entitled to equitable relief pursuant to Business and
- 14 Professions Code § 17200 *et seq.*

15 **C. Typicality**

16 40. The claims of the named plaintiff is typical of those of Class Members. The Class

17 Members all sustained injuries and damages arising out of and caused by Defendants' common

18 course of conduct in violation of statutes, as well as regulations that have the force and effect of

19 law, as alleged herein.

20 **D. Adequacy of Representation**

21 41. Plaintiff will fairly and adequately represent and protect the interest of the Class

22 Members. Counsel who represents Class Members are experienced and competent in litigating

23 employment class actions.

24 **E. Superiority of Class Action**

25 42. A class action is superior to other available means for the fair and efficient

26 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and

27 questions of law and fact common to all Class Members predominate over any questions affecting

28 only individual Class Members. Each Class Member has been damaged and is entitled to recovery

1 by reason of Defendants' illegal policies or practices of failing to compensate Class Members
2 properly.

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

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

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

1 and policies and practices on Class Members.

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

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY MINIMUM WAGES**

10 **(Against All Defendants)**

11 47. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
12 full herein.

13 48. Defendants, at times, failed to pay Class Members, or some of them, minimum
14 wages for all hours worked. Defendants had a consistent policy of misstating Class Members' time
15 records and failing to pay Class Members for all hours worked. Class Members would, at times,
16 work hours and not receive wages, including as alleged above in connection with off the clock
17 work. Additionally, Defendants failed to incorporate non-discretionary bonuses and/or shift
18 differential pay into the regular rate of pay used to calculate and pay overtime. Defendants, and
19 each of them, have intentionally and improperly changed, adjusted and/or modified the hours of
20 Class Members, which resulted in off the clock work and underpayment of all wages owed to
21 Class Members over a period of time, while benefiting Defendants. During the relevant time
22 period, Defendants thus regularly failed to pay minimum wages to Class Members, to their
23 detriment. Additionally, Defendants had a consistent policy of failing to pay Class Members, at
24 times, for hours worked during alleged meal and rest periods for which Class Members were
25 consistently denied, as also addressed herein. Defendants' uniform pattern of unlawful wage and
26 hour practices manifested, without limitation, applicable to the Class as a whole, as a result of
27 implementing a uniform policy and practice that denied accurate compensation to Class Members
28 as to minimum wage pay.

1 49. In California, employees must be paid at least the then applicable state minimum
2 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
3 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
4 timely pay its employees for all hours worked. Defendants failed to do so.

5 50. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states:
6 “The minimum wage for employees fixed by the commission is the minimum wage to be paid to
7 employees, and the payment of a less wage than the minimum so fixed is unlawful.”

8 51. The applicable minimum wages fixed by the commission for work during the
9 relevant period is found in Paragraph 4(A)-4(D) of the IWC Wage Orders.

10 52. The minimum wage provisions of California Labor Code are enforceable by private
11 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
12 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
13 overtime compensation applicable to the employee is entitled to recover in a civil action the
14 unpaid balance of the full amount of this minimum wage or overtime compensation, including
15 interest thereon, reasonable attorney’s fees and costs of suit.”

16 53. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
17 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
18 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
19 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
20 all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may
21 be used as a credit against a minimum wage obligation.

22 54. In committing these violations of the California Labor Code, Defendants
23 inaccurately recorded, or required Class Members, or some of them, to input times that did not
24 reflect their actual hours worked, or calculated the correct time worked and consequently
25 underpaid the actual time worked by Class Members. Defendants acted in an illegal attempt to
26 avoid the payment of all earned wages, and other benefits in violation of the California Labor
27 Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.
28 As a result of these violations, Defendants also failed to timely pay all wages earned in accordance

1 with California Labor Code § 1194.

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

6 56. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
7 1197.1, Class Members are entitled to recover a penalty of \$100.00 for the initial failure to timely
8 pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each
9 employee minimum wages.

10 57. Pursuant to California Labor Code § 1194.2, Class Members are further entitled to
11 recover liquidated damages in an amount equal to wages unlawfully unpaid and interest thereon.

12 58. Defendants have the ability to pay minimum wages for all time worked and have
13 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
14 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Class Members.

15 59. Wherefore, Class Members, or some of them, are entitled to recover the unpaid
16 minimum wages (including double minimum wages), liquidated damages in an amount equal to
17 the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs
18 of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of the Class
19 further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well
20 as the assessment of any statutory penalties against Defendants, in a sum as provided by the
21 California Labor Code, including § 558, and/or other applicable statutes.

22 **SECOND CAUSE OF ACTION**

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

24 **(Against All Defendants)**

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

27 61. California Labor Code § 1194 provides that “any employee receiving less than the
28 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to

1 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
2 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
3 may be maintained directly against the employer in an employee's name without first filing a
4 claim with the Division of Labor Standards and Enforcement.

5 62. By their conduct, as set forth herein, Defendants, at times, violated California
6 Labor Code § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay
7 Class Members, or some of them: (a) time and one-half their regular hourly rates for hours worked
8 in excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek or for
9 the first eight (8) hours worked on the seventh day of work in any one workweek; or (b) twice
10 their regular rate of pay for hours worked in excess of twelve (12) hours in any one (1) day or for
11 hours worked in excess of eight (8) hours on any seventh day of work in a workweek.

12 63. Defendants had a consistent policy of not paying Class Members, or some of them,
13 wages for all hours worked, including by requiring off the clock work as addressed above.
14 Additionally, Defendants failed to incorporate non-discretionary bonuses and/or shift differential
15 pay into the regular rate of pay used to calculate and pay overtime. Defendants, and each of them,
16 have intentionally and improperly rounded, changed, adjusted and/or modified certain employees'
17 hours, including Plaintiff's, in order to avoid paying Class Members all earned and owed straight
18 time and overtime wages and other benefits, in violation of the California Labor Code, the
19 California Code of Regulations and the IWC Wage Orders and guidelines set forth by the Division
20 of Labor Standards and Enforcement. Defendants have also violated these provisions by requiring
21 Class Members to work through portions of their meal period. Therefore, Class Members, at
22 times, were not properly compensated, nor were they paid overtime rates for hours worked in
23 excess of eight hours in a given day, and/or forty hours in a given week. Based on information and
24 belief, Defendants did not make available to Class Members a reasonable protocol for correcting
25 time records when Class Members worked overtime hours or to fix incorrect time entries or those
26 that Defendants unlawfully rounded to the Class Members' detriment.

27 64. Defendants' failure to pay Class Members the unpaid balance of regular wages
28 owed and overtime compensation, as required by California law, violates the provisions of Labor

1 Code §§ 510 and 1198, and is therefore unlawful.

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

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

22 67. Class Members have been damaged by these violations of California Labor Code
23 §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

24 68. Consequently, pursuant to the California Labor Code, including Labor Code §§
25 204, 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B),
26 Defendants are liable to Class Members for the full amount of all their unpaid wages and overtime
27 compensation, with interest, plus their reasonable attorneys’ fees and costs, as well as the
28 assessment of any statutory penalties against Defendants, and each of them, and any additional

1 sums as provided by the Labor Code and/or other statutes.

2 **THIRD CAUSE OF ACTION**

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

4 **(Against All Defendants)**

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

7 70. Class Members, or some of them, regularly worked shifts greater than five (5)
8 hours and in some instances, greater than ten (10) hours. Pursuant to Labor Code § 512 an
9 employer may not employ someone for a shift of more than five (5) hours without providing him
10 or her with a meal period of not less than thirty (30) minutes or for a shift of more than ten (10)
11 hours without providing him or her with a second meal period of not less than thirty (30) minutes.

12 71. Defendants, at times, failed to provide Class Members, or some of them, with meal
13 periods as required under the Labor Code. Defendants placed their needs over Class Members
14 lawful meal breaks and this resulted in Class Members consistently having to work through their
15 scheduled meal breaks because the demands of the job would not avail them the opportunity to
16 take a lawfully uninterrupted and off-duty meal break. Furthermore, upon information and belief,
17 on the occasions when Class Members worked more than ten (10) hours in a given shift, they did
18 so without receiving a second uninterrupted thirty (30) minute meal period as required by law.

19 72. Defendants thus failed to provide Class Members with meal periods as required by
20 the Labor Code, including by not providing them with the opportunity to take meal breaks, by
21 providing them late or for less than thirty (30) minutes, or by requiring them to perform work
22 during breaks.

23 73. Moreover, Defendants failed to compensate Class Members for each meal period
24 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of
25 the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee
26 a meal period in accordance with this section, the employer shall pay the employee one (1) hour of
27 pay at the employee's regular rate of compensation for each workday that the meal period is not
28 provided. Defendants failed to compensate Class Members for each meal period not provided or

1 inadequately provided, as required under Labor Code § 226.7.

2 74. Therefore, pursuant to Labor Code § 226.7 and the applicable IWC Wage Order,
3 paragraph 11, Class Members are entitled to damages in an amount equal to one (1) hour of wages
4 at their effective hourly rates of pay for each meal period not provided or deficiently provided, a
5 sum to be proven at trial, as well as the assessment of any statutory penalties against the
6 Defendants, and each of them, in a sum as provided by the Labor Code and other statutes.

7 **FOURTH CAUSE OF ACTION**

8 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

9 **(Against All Defendants)**

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

12 76. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
13 provide that employers must authorize and permit all employees to take rest periods at the rate of
14 ten (10) minutes net rest time per four (4) work hours.

15 77. Class Members, or some of them, consistently worked consecutive four (4) hour
16 shifts and were generally scheduled for shifts of greater than 3.5 hours total, thus requiring
17 Defendants to authorize and permit them to take rest periods. Pursuant to the Labor Code and the
18 applicable IWC Wage Order, Class Members were entitled to paid rest breaks of not less than ten
19 (10) minutes for each consecutive four (4) hour shift, and at times, Defendants, failed to provide
20 Class Members with timely rest breaks of not less than ten (10) minutes for each consecutive four
21 (4) hour shift. Defendants placed their needs over Class Members lawful rest breaks and this
22 resulted in Class Members, or some of them, having to work through their scheduled rest breaks
23 because the demands of the job would not avail them the opportunity to take a lawfully
24 uninterrupted and off-duty rest break. Thus, Class Members, or some of them, were denied of their
25 rest breaks.

26 78. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
27 provide that if an employer fails to provide an employee rest period in accordance with this
28 section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of

1 compensation for each workday that the rest period is not provided.

2 79. Defendants, and each of them, have at times therefore intentionally and improperly
3 denied rest periods to Class Members in violation of Labor Code §§ 226.7 and 512 and paragraph
4 12 of the applicable IWC Wage Orders.

5 80. Defendants, at times, failed to authorize and permit Class Members to take rest
6 periods, as required by the Labor Code. Moreover, Defendants, at times, did not compensate Class
7 Members, or some of them, with an additional hour of pay at each Class Member's effective
8 hourly rate for each day that Defendants failed to provide them with adequate rest breaks, as
9 required under Labor Code § 226.7.

10 81. Therefore, pursuant to Labor Code § 226.7 and paragraph 12 of the applicable IWC
11 Wage Orders, Class Members are entitled to damages in an amount equal to one (1) hour of wages
12 at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to
13 be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each
14 of them, in a sum as provided by the Labor Code and/or other statutes.

15 **FIFTH CAUSE OF ACTION**
16 **FAILURE TO PAY VACATION WAGES**
17 **(Against All Defendants)**

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

20 83. Pursuant to California Labor Code § 227.3, whenever a contract of employment or
21 employment policy provides for paid vacation and an employee is terminated without having
22 taken off her vested vacation time, all vested vacation shall be paid to her as wages at her final rate
23 in accordance with said contract of employment or policy respecting eligibility or time served.

24 84. Therefore, pursuant to, Plaintiff seeks to recover penalties pursuant to Labor Code
25 § 227.3.

26 ///

27 ///

28 ///

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

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

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

87. Defendants, at times, failed to provide Class Members, or some of them, with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements failed to include the total hours worked by the employees and all applicable hourly rates in effect during the pay period and therefore the wage statements do not comply with Labor Code § 226(a)(2) and § 226(a)(9). Additionally, the wage statements given to Class Members, or some of them, failed to accurately account for unpaid wages and overtime because Class Members' actual hours worked were under-reported due to off the clock work. Moreover, the wage statements given to Class Members, or some of them, failed to incorporate non-discretionary bonuses and/or shift differential pay into the regular rate of pay used to calculate and pay overtime compensation. Additionally, the wage statements given to Class Members, or some of them, failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

88. Throughout the liability period, Defendants, at times, intentionally failed to furnish to Class Members, or some of them, upon each payment of wages, itemized statements accurately showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net

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

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

23 90. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code
24 § 226(a), Class Members suffered injuries, including among other things confusion over whether
25 they received all wages owed them, the difficulty and expense involved in reconstructing pay
26 records, and forcing them to make mathematical computations to analyze whether the wages paid
27 in fact compensated them correctly for all hours worked.

28 91. Pursuant to Labor Code §§ 226(a) and 226(e) and 1174, and the applicable IWC

1 Wage Order, paragraph 7(B), Class Members, or some of them, are entitled to recover the greater
2 of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs
3 and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
4 aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs
5 and reasonable attorneys' fees.

6 **SEVENTH CAUSE OF ACTION**
7 **VIOLATION OF LABOR CODE § 203**
8 **(Against All Defendants)**

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

11 93. Numerous Class Members are no longer employed by Defendants; they either quit
12 Defendants' employ or were fired therefrom.

13 94. Defendants, at times, failed to pay these Class Members, or some of them, all
14 wages due and certain at the time of termination or within seventy-two (72) hours of resignation.

15 95. The wages withheld, at times, from these Class Members by Defendants remained
16 due and owing for more than thirty (30) days from the date of separation from employment.

17 96. Defendants, at times, failed to pay Class Members, or some of them, without
18 abatement, all wages as defined by applicable California law. Specifically, Defendants, at times,
19 failed to pay Plaintiff for all wages due and certain at the time of her termination because the final
20 paycheck given to Plaintiff did not include accrued vacation time or paid time off. Additionally,
21 Plaintiff and Class Members were not paid all regular and overtime wages because Defendants
22 failed to pay for all hours worked, required off the clock work, unlawfully rounded time entries to
23 the detriment of Class Members, and failed to incorporate non-discretionary bonuses and/or shift
24 differential pay into the regular rate of pay used to calculate and pay for overtime pay, sick pay,
25 and meal and rest break premiums. Moreover, Defendants failed to pay premium wages owed for
26 unprovided meal periods and rest periods, as further detailed in this Complaint. Defendants'
27 failure to pay said wages within the required time was willful within the meaning of Labor Code §
28 203.

97. Defendants' failure to pay wages, as alleged entitles these Class Members to penalties under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

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

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

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

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

1 commissions to which he or she was entitled.

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

11 102. As a result of the unlawful acts of Defendants, Plaintiff and Class Members seek to
12 represent they have been deprived of wages in amounts to be determined at trial, and they are
13 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
14 pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
15 applicable IWC Wage Orders.

16 **NINTH CAUSE OF ACTION**

17 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**

18 **AND 1174.5**

19 **(Against All Defendants)**

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

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

26 105. During the course of Plaintiff’s and Class Members’ employment, Defendants, at
27 times, consistently failed to maintain accurate time and wage records for Plaintiff and Class
28 Members, or some of them, as required by California Labor Code § 1174 by failing to pay

1 Plaintiff and Class Members proper wages, overtime, and premium pay as discussed above.

2 106. Accordingly, Defendants are liable for civil penalties pursuant to the California
3 Labor Code § 1174.5 for the three (3) years prior to the filing of this Complaint.

4 **TENTH CAUSE OF ACTION**

5 **REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802**

6 **(Against All Defendants)**

7 107. Plaintiff re-alleges and incorporates all preceding paragraphs as though set forth in
8 full herein.

9 108. Under Labor Code § 2802(a) an employer must indemnify its employees for all
10 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
11 of his or her duties, or of his or her obedience to the directions of the employer.

12 109. Defendants have regularly required Class Members, or some of them, to incur
13 business expenses in the course of performing their required job duties for Defendants including for
14 cell phone expenses and tools and equipment. These expenses incurred by Class Members were
15 necessary and required of them in performing their assigned job duties, but Defendants failed to
16 reimburse Class Members for all such necessary expenditures. Class Members were not reimbursed
17 for those lawful and necessary work related expenses or losses incurred in direct discharge of their
18 job duties during employment with Defendants and at the direction of the Defendants pursuant to
19 Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

20 110. As a result of the unlawful acts of Defendants, Class Members have been deprived
21 of reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
22 plus interest and penalties thereon, attorneys' fees, and costs.

23 **ELEVENTH CAUSE OF ACTION**

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

25 **(Against All Defendants)**

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

28 112. Plaintiff, on behalf of herself, Class Members, and the general public, brings this

1 claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as
2 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Class
3 Members, or some of them, and the general public. Plaintiff seeks to enforce important rights
4 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

5 113. Plaintiff is a “person” within the meaning of Business & Professions Code
6 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
7 relief, restitution, and other appropriate equitable relief.

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

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

24 116. Defendants have violated statutes and public policies. Through the conduct alleged
25 in this Complaint Defendants have acted contrary to these public policies, have violated specific
26 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
27 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
28 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges

1 guaranteed to all employees under the law.

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

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

8 119. By the conduct alleged herein, Defendants have engaged and continue to engage in
9 a business practice which violates California and federal law, including but not limited to, the
10 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
11 Code including Sections 203, 204, 226, 226.7, 512, 1194, 1197, and 1198, for which this Court
12 should issue declaratory and other equitable relief pursuant to California Business & Professions
13 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
14 competition, including restitution of wages wrongfully withheld.

15 120. As a proximate result of the above-mentioned acts of Defendants, Class Members
16 have been damaged, in a sum to be proven at trial.

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

24 **TWELFTH CAUSE OF ACTION**

25 **VIOLATION OF LABOR CODE § 2698, ET SEQ.**

26 **(Against All Defendants)**

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

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

5 124. In failing to pay Aggrieved Employees minimum wages and overtime, not
6 providing proper meal and rest periods, failing to provide accurate wage statements, and failing to
7 Pay Employees upon termination or timely upon resignation, all discussed above, Defendants
8 failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor
9 Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and
10 the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the
11 applicable IWC Wage Orders.

12 125. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
13 for Defendants’ violation of Labor Code provisions included under Labor Code 2699.5, including
14 the penalty provisions, without limitation, based, inter alia, on the following California Labor
15 Code sections: 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194,
16 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, and 2698 *et seq.*

17 126. More specifically, after complying with the notice procedures of Labor Code §
18 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
19 and other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
20 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
21 including as follows:

22 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
23 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
24 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
25 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
26 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
27 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys’ fees and costs pursuant
28 to Labor Code § 2699(g)(1);

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

9 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to
10 provide Plaintiff and Aggrieved Employees with accurate, itemized wage statements and failure to
11 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
12 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s)
13 seeking all civil and statutory penalties and wages available and applicable under Labor Code §§
14 226€, 226.3, 558, 1174.5, 1199, 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
15 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
16 providing inaccurate wage statements and failing to maintain records as required under Labor
17 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
18 Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a
19 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
20 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
21 citation, ..."

22 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
23 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
24 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
25 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
26 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
27 § 2699(g)(1);

28 (e) All Alleged Violations of the IWC Wage Orders and Other Labor Code

1 Sections: For any above addressed violation of the applicable provisions of the IWC Wage
2 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §
3 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and
4 paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to
5 Labor Code § 2699(g)(1).

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

8 (a) Any employer or other person acting on behalf of an employer who violates, or
9 causes to be violated, a section of this chapter or any provision regulating hours and days of work
10 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
11 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
12 for which the employee was underpaid in addition to an amount sufficient to recover underpaid
13 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee
14 for each pay period for which the employee was underpaid in addition to an amount sufficient to
15 recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected
16 employee.

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

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

25 128. Plaintiff has exhausted his administrative remedies by sending a certified letter to
26 the LWDA and Defendants postmarked on **September 6, 2024**, addressing in detail the specific
27 provisions of the Labor Code Defendants have violated and addressing the facts and legal theories
28 to support the alleged violations and requested penalties. The LWDA has not provided notice of

its intent to investigate the alleged violations within 65 calendar days of the postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed herein and in the PAGA Notice Letter and the original Complaint.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Class Members and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Class Members for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
6. For compensatory damages in the amount of the hourly wage made by Class Members for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
7. For penalties pursuant to Labor Code § 226(e) for Class Members, as may be proven;
8. For penalties pursuant to Labor Code § 203 for all Class Members who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
9. For restitution and/or damages for all amounts unlawfully withheld from the wages for all class members in violation of Labor Code § 204, as may be proven;
10. For penalties pursuant to Labor Code § 227.3 for all Class Members who were not paid for all accrued vacation time at separation.

11. For restitution and/or damages for all amounts unlawfully withheld from the wages for all Class Members in violation of Labor Code § 2802, as may be proven;

12. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;

13. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

14. 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;

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

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

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

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

19. For an award of attorneys' fees; and

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

DATED: November 8, 2024

D.LAW, INC.

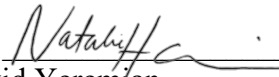
By: 
David Yeremian
Natalie Haritounian
Matthew Carraher
Attorneys for Plaintiff GLADYS FAYTH
BAUTISTA, and all others similarly situated

DEMAND FOR JURY TRIAL

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

DATED: November 8, 2024

D.LAW, INC.

By: 
David Yeremian
Natalie Haritounian
Matthew Carraher
Attorneys for Plaintiff GLADYS FAYTH
BAUTISTA, and all others similarly situated

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

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 450 N Brand Blvd., Suite 840, Glendale, CA 91203.

PETER CHOI
Senior Counsel
Call & Jensen, APC
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660
(949) 717-3000
pchoi@calljensen.com

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

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


Silvia Pimentel