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on behalf of herself and others similarly situated

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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By V. Navarro ,Deputy Clerk

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

JOEY ADAMS, an individual on behalf of
herself and all others similarly situated,

Plaintiff,

vs.

INSURANCE COMPANY OF THE WEST,
a California corporation; ICW GROUP
HOLDINGS INC., a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 24CU022035N

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

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. Violation of Labor Code § 226(a);
6. Violation of Labor Code § 203;
7. Violation of Labor Code § 204;
8. Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5; and
9. Failure to Reimburse Necessary Business Expenses § 2802;
10. Violation of Business & Professions Code § 17200 *et seq.*
11. Penalties under PAGA Labor Code § 2698

DEMAND FOR JURY TRIAL

1 INTRODUCTION

2 1. Plaintiff JOEY ADAMS (“Plaintiff”) brings this action on behalf of herself and the
3 Class Members who are defined as “all current and former employees within the State of
4 California who, at any time from four (4) years prior to the filing of this lawsuit, are or were
5 employed as non-exempt hourly employees by Defendants INSURANCE COMPANY OF THE
6 WEST, a California corporation; ICW GROUP HOLDINGS INC., a California corporation; and
7 DOES 1 through 50” (all defendants being collectively referred to herein as “Defendants”).

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

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

15 THE PARTIES

16 A. The Plaintiff

17 4. Plaintiff JOEY ADAMS resides in California, during the time period relevant to
18 this Complaint, was employed by Defendants as a non-exempt hourly employee within the State
19 of California.

20 B. The Defendants

21 5. Defendant INSURANCE COMPANY OF THE WEST is a California corporation
22 and is registered with the California Secretary of State. Defendant INSURANCE COMPANY OF
23 THE WEST has been the employer listed on the wage statements and employment records issued
24 to Plaintiff during the relevant time period that Plaintiff was employed with Defendants.

25 6. Defendant ICW GROUP HOLDING, INC. is a California corporation and has been
26 the employer listed on the wage statements and employment records issued to Plaintiff during the
27 relevant time period that Plaintiff was employed with Defendants.

28 7. The true names and capacities, whether individual, corporate, associate, or

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

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

17 9. Whenever and wherever reference is made in this Complaint to any act by a
18 defendant or defendants, such allegations and references shall also be deemed to mean the acts and
19 failures to act of each defendant acting individually, jointly, and severally.

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

24 JURISDICTION AND VENUE

25 11. This Court has jurisdiction over this Action pursuant to California Code of Civil
26 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
27 as a Class Action on behalf of similarly situated Class Members of Defendants pursuant to
28 California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial

1 district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief,
2 the obligations and liabilities giving rise to this lawsuit occurred in part in San Diego County.
3 Defendants maintain and operate facilities in San Diego County and employs Plaintiff and other
4 Class Members in San Diego County, while doing business throughout California.

5 **FACTUAL BACKGROUND**

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

16 13. During the course of Class Members' employment with Defendants, they were not
17 paid all wages they were owed, including for all work performed resulting in off the clock work.
18 Defendants required Class Members to perform pre-shift and post-shift off the clock work. For
19 instance, at the beginning of Class Members' shift, they were required to be ready to begin work
20 as soon as they clocked in. This made it so Class Members were required to set up their workspace
21 prior to clocking in. At the end of Class Members' shift, they were required to clock out after eight
22 hours of work and continue working until their daily tasks were complete. Class Members were
23 also required to answer their phones and discuss work related matters with supervisors while off
24 the clock.

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

1 commissions paid to the Class Members into the regular rate of pay Defendants used to calculate
2 and pay for overtime pay, double time pay, sick pay, and meal and rest break premiums.

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

9 16. As a result of the above described requirements to work off the clock, , the failure
10 to incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to
11 calculate and pay overtime, double time, sick pay, and meal and rest break premiums, and the
12 other wage violations they endured at Defendants' hands, Class Members were not properly paid
13 all wages earned and all wages owed to them by Defendants, including when working more than
14 eight (8) hours in any given day and/or more than forty (40) hours in any given week.

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

22 18. Therefore, from at least four (4) years prior to the filing of this lawsuit and
23 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
24 Members for all hours worked, and failing to pay minimum wages for all time worked, as required
25 by California law. Defendants thus failed to pay Class Members at least minimum wages for all
26 the time they worked for Defendants in violation of the Labor Code and applicable IWC Wage
27 Orders as the actual times when Class Members were under the control and direction of
28 Defendants was under reported in the hours reflected on the timekeeping records. Furthermore,

1 Defendants' willful actions resulted in the systematic underpayment of wages to Class Members,
2 including underpayment of overtime pay to Class Members over a period of time.

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

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

21 21. On the occasions when Class Members worked over 10 hours in a shift, Defendants
22 also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a
23 result, Defendants' failure to provide Class Members with all legally required off-duty, unpaid
24 meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by
25 Defendants' business records, or lack thereof. Defendants also failed to pay Class Members
26 "premium pay," i.e. one hour of wages at each Class Member's effective hourly rate of pay, for
27 each meal period or rest break that Defendants failed to provide or deficiently provided.

28 22. Therefore, for at least four years prior to the filing of this action and through to the

1 present, Defendants have regularly required Class Members to work shifts in excess of five (5)
2 hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes,
3 and shifts in excess of (10) hours without providing them with second meal periods of not less
4 than thirty minutes; nor did Defendants pay Class Members “premium pay,” i.e. one hour of
5 wages at each Class Member’s effective hourly rate of pay, for each meal period that Defendants
6 failed to provide or deficiently provided.

7 23. Meal period violations thus occurred in one or more of the following manners:

- 8 (a) Class Members were not provided full thirty-minute duty free meal periods
9 for work days in excess of five (5) hours and were not compensated one (1)
10 hour’s wages in lieu thereof, all in violation of, among others, Labor Code
11 §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage
12 Order(s);
- 13 (b) Class Members were not provided second full thirty-minute duty free meal
14 periods for work days in excess of ten (10) hours;
- 15 (c) Class Members were required to work through at least part of their daily
16 meal period(s);
- 17 (d) Meal periods were provided after five (5) hours of continuous work during
18 a shift; and
- 19 (e) Class Members were restricted in their ability to take a full thirty-minute
20 meal period.

21 24. Class Members were also not authorized and permitted to take lawful rest periods,
22 were systematically required by Defendants to work through or during breaks and were not
23 provided with one (1) hour’s wages in lieu thereof. Class Members were restricted in their ability
24 to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest
25 periods. Therefore, from at least four years prior to the filing of this lawsuit and continuing to the
26 present, Defendants have consistently failed to provide Class Members with paid rest breaks of not
27 less than ten minutes for every work period of four or more consecutive hours; or major fraction
28 thereof, nor did Defendant pay Class Members premium pay for each day on which requisite rest

breaks were not provided or were deficiently provided.

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

- (a) Class Members were required to work without being provided a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked and were not compensated one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not provided;
- (b) Class Members were not authorized and permitted to take timely rest periods for every four hours worked, or major fraction thereof; and
- (c) Class Members were required to remain on-duty during rest periods or otherwise had their rest periods interrupted by work demands.

26. Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements fail to include the total hours worked and do not comply with Labor Code § 226(a)(2). Additionally, the wage statements given to Class Members failed to incorporate non-discretionary bonuses and/or commissions into the regular rate of pay used to calculate and pay overtime compensation, double time pay, sick pay, and meal and rest break premiums. Thus, the wage statements do not provide accurate hourly rates for overtime and the statements do not comply with Labor Code § 226(a)(9). Additionally, the wage statements given to Class Members failed to accurately account for unpaid wages and overtime because their actual hours worked were under-reported due to off the clock work. Additionally, the wage statements given to Class Members failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

27. From at least four (4) years prior to filing this lawsuit and continuing to the present, Defendants have thus also had a consistent policy of failing to pay all wages owed to Class Members at the time of their termination of within seventy-two (72) hours of their resignation, as required by California wage-and-hour laws. Specifically, Class Members were not paid all regular and overtime wages because Defendants failed to pay for all hours worked, required off the clock work, and failed to incorporate non-discretionary bonuses and/or commissions into the regular rate

1 of pay used to calculate and pay for overtime, double time, sick pay, and meal and rest break
2 premiums. Additionally, Defendants failed to pay premium wages owed for unprovided meal
3 periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said
4 wages within the required time was willful within the meaning of Labor Code § 203.

5 28. Additionally, from at least four (4) years prior to the filing of this lawsuit and
6 continuing to the present, Defendants have regularly required Plaintiff to incur business expenses
7 in the course of performing her required job duties for Defendants including for cell phone
8 expenses, equipment required to complete her job duties, and the cost of home internet when
9 Plaintiff was required to work from home. Upon information and belief, Class Members incurred
10 similar costs. These expenses incurred by Plaintiff and Class Members were necessary and
11 required of them in performing their assigned job duties, but Defendants failed to reimburse
12 Plaintiff and Class Members for all such necessary expenditures, thus entitling them to
13 reimbursement according to proof as required under Labor Code § 2802 and the applicable
14 provisions of the IWC Wage Orders.

15 29. In light of the foregoing, Plaintiff and Class Members bring this action pursuant to,
16 *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 248, 510, 512, 558,
17 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698 et seq., 2802 and
18 California Code of Regulations, Title 8, section 11000 et seq.

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

23 **CLASS ALLEGATIONS**

24 31. Plaintiff seeks to represent the Subclasses composed of and defined as follows:

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

27 b. Subclass 2. Wages and Overtime Subclass. All Class Members who were not
28 compensated for all hours worked for Defendants at the required rates of pay, including for all

1 hours worked in excess of eight in a day and/or forty in a week.

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

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

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

12 f. Subclass 6. Termination Pay Subclass. All Class Members who, within the
13 applicable limitations period, either voluntarily or involuntarily separated from their employment
14 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
15 termination.

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

19 h. Subclass 8. Payroll Records Subclass. All Class members who were subject to
20 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
21 by California wage-and-hour laws.

22 i. Subclass 9. Expense Reimbursement Subclass. All Class Members who incurred
23 necessary and reasonable expenses in connection with performing their job duties for
24 Defendant and who were subject to a policy and/or practice under which such expenses
25 were not reimbursed.

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

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

5 33. Defendants, as a matter of company policy, practice and procedure, and in violation
6 of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements,
7 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
8 in a practice whereby Defendants failed to correctly calculate compensation for the time worked
9 by Class Members, even though Defendants enjoyed the benefit of this work, required Class
10 Members to perform this work and permitted or suffered to permit this work. Defendants have
11 uniformly denied these Class Members wages to which these employees are entitled and failed to
12 provide meal periods or authorize and permit rest periods, in order to unfairly cheat the
13 competition and unlawfully profit.

14 34. This action has been brought and may properly be maintained as a class action
15 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
16 of interest in litigation and proposed class is easily ascertainable.

17 **A. Numerosity**

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

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

26 **B. Commonality**

27 37. There are questions of law and fact common to the Class that predominates over
28 any questions affecting only individual Class Members. These common questions of law and fact

1 include:

- 2 a. Whether Defendants failed to pay Class Members minimum wages;
- 3 b. Whether Defendants failed to pay Class Members wages for all hours worked;
- 4 c. Whether Defendants failed to pay Class Members overtime as required under Labor
5 Code § 510;
- 6 d. Whether Defendants failed to incorporate non-discretionary bonuses and/or
7 commissions into the regular rate of pay used to calculate and pay overtime, double
8 time, sick pay, and meal and rest break premiums;
- 9 e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
10 IWC Wage Orders, by failing to provide Class Members with requisite meal
11 periods or premium pay in lieu thereof;
- 12 f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
13 Orders, by failing to authorize and permit Class Members to take requisite rest
14 breaks or provide premium pay in lieu thereof;
- 15 g. Whether Defendants violated Labor Code § 226(a) by providing Class Members
16 with inaccurate wage statements;
- 17 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
18 wages and compensation due and owing at the time of termination of employment;
- 19 i. Whether Defendants' conduct was willful;
- 20 j. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
21 Orders by failing to maintain accurate records of Class Members' earned wages and
22 work periods;
- 23 k. Whether Defendants violated Labor Code § 1194 by failing to compensate all Class
24 Members during the relevant time period for all hours worked, whether regular or
25 overtime;
- 26 l. Whether Defendants violated Labor Code § 204 by failing to timely pay wages;
- 27 m. Whether Defendants violated Labor Code § 2802 by failing to reimburse all
28 necessary business expenses Defendants required them to incur in performing their

1 job duties;

2 n. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

3 o. Whether Class Members are entitled to equitable relief pursuant to Business and
4 Professions Code § 17200 *et seq.*

5 **C. Typicality**

6 38. The claims of the named plaintiff is typical of those of Class Members. The Class
7 Members all sustained injuries and damages arising out of and caused by Defendants' common
8 course of conduct in violation of statutes, as well as regulations that have the force and effect of
9 law, as alleged herein.

10 **D. Adequacy of Representation**

11 39. Plaintiff will fairly and adequately represent and protect the interest of the Class
12 Members. Counsel who represents Class Members are experienced and competent in litigating
13 employment class actions.

14 **E. Superiority of Class Action**

15 40. A class action is superior to other available means for the fair and efficient
16 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
17 questions of law and fact common to all Class Members predominate over any questions affecting
18 only individual Class Members. Each Class Member has been damaged and is entitled to recovery
19 by reason of Defendants' illegal policies or practices of failing to compensate Class Members
20 properly.

21 41. As to the issues raised in this case, a class action is superior to all other methods for
22 the fair and efficient adjudication of this controversy, as joinder of all Class Members is
23 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
24 Members. Further, as the economic or other loss suffered by vast numbers of Class Members may
25 be relatively small, the expense and burden of individual actions makes it difficult for the Class
26 Members to individually redress the wrongs they have suffered. Moreover, in the event
27 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
28 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in

1 managing this case as a class action, and proceeding on a class-wide basis will permit Class
2 Members to vindicate their rights for violations they endured which they would otherwise be
3 foreclosed from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to
4 them.

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

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

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

26 **FIRST CAUSE OF ACTION**
27 **FAILURE TO PAY MINIMUM WAGES**
28 **(Against All Defendants)**

1 45. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
2 full herein.

3 46. Defendants failed to pay Class Members minimum wages for all hours worked.
4 Defendants had a consistent policy of misstating Class Members' time records and failing to pay
5 Class Members for all hours worked. Class Members would work hours and not receive wages,
6 including as alleged above in connection with off the clock work. During the relevant time period,
7 Defendants thus regularly failed to pay minimum wages to Class Members, to their detriment.
8 Additionally, Defendants failed to incorporate non-discretionary bonuses and/or commissions into
9 the regular rate of pay used to calculate and pay overtime. Additionally, Defendants had a
10 consistent policy of failing to pay Class Members for hours worked during alleged meal and rest
11 periods for which Class Members were consistently denied, as also addressed herein. Defendants'
12 uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to
13 the Class as a whole, as a result of implementing a uniform policy and practice that denied
14 accurate compensation to Class Members as to minimum wage pay.

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

19 48. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:
20 "The minimum wage for employees fixed by the commission is the minimum wage to be paid to
21 employees, and the payment of a less wage than the minimum so fixed is unlawful."

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

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

1 interest thereon, reasonable attorney's fees and costs of suit."

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

8 52. In committing these violations of the California Labor Code, Defendants
9 inaccurately recorded, or required Class Members to input times that did not reflect their actual
10 hours worked, or calculated the correct time worked and consequently underpaid the actual time
11 worked by Class Members. Defendants acted in an illegal attempt to avoid the payment of all
12 earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
13 Commission requirements and other applicable laws and regulations. As a result of these
14 violations, Defendant also failed to timely pay all wages earned in accordance with California
15 Labor Code § 1194.

16 53. 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 54. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
21 1197.1, Class Members are entitled to recover a penalty of \$100.00 for the initial failure to timely
22 pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each
23 employee minimum wages.

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

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

57. Wherefore, Class Members are entitled to recover the unpaid minimum wages (including double minimum wages), 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). Plaintiff 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, including § 558, and/or other applicable statutes.

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SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

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

59. 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.

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

61. Defendants had a consistent policy of not paying Class Members wages for all hours worked, including by requiring off the clock. Defendants, and each of them, have

1 intentionally avoided paying Class Members all earned and owed straight time and overtime
2 wages and other benefits, in violation of the California Labor Code, the California Code of
3 Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor
4 Standards and Enforcement. Additionally, Defendants failed to incorporate non-discretionary
5 bonuses and/or commissions into the regular rate of pay used to calculate and pay overtime.
6 Defendants have also violated these provisions by requiring Class Members to work through
7 portions of their meal period. Therefore, Class Members were not properly compensated, nor were
8 they paid overtime rates for hours worked in excess of eight hours in a given day, and/or forty
9 hours in a given week.

10 62. Defendants' failure to pay Class Members the unpaid balance of regular wages
11 owed and overtime compensation, as required by California law, violates the provisions of Labor
12 Code §§ 510 and 1198, and is therefore unlawful.

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

26 64. Defendants' failure to pay compensation in a timely fashion also constituted a
27 violation of California Labor Code § 204, which requires that all wages shall be paid
28 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct

1 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
2 and overtime compensation earned by Class Members. Each such failure to make a timely
3 payment of compensation to Class Members constitutes a separate violation of California Labor
4 Code § 204.

5 65. Class Members have been damaged by these violations of California Labor Code
6 §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

7 66. Consequently, pursuant to the California Labor Code, including Labor Code §§
8 204, 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B),
9 Defendants are liable to Class Members for the full amount of all their unpaid wages and overtime
10 compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the
11 assessment of any statutory penalties against Defendants, and each of them, and any additional
12 sums as provided by the Labor Code and/or other statutes.

13 **THIRD CAUSE OF ACTION**

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

15 **(Against All Defendants)**

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

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

23 69. Defendants failed to provide Class Members with meal periods as required under
24 the Labor Code. Defendants placed their needs over Class Members lawful meal breaks and this
25 resulted in Class Members consistently having to work through their scheduled meal breaks
26 because the demands of the job would not avail them the opportunity to take a lawfully
27 uninterrupted and off-duty meal break. Furthermore, upon information and belief, on the occasions
28 when Class Members worked more than ten (10) hours in a given shift, they did so without

1 receiving a second uninterrupted thirty (30) minute meal period as required by law.

2 70. Defendants thus failed to provide Class Members with meal periods as required by
3 the Labor Code, including by not providing them with the opportunity to take meal breaks, by
4 providing them late or for less than thirty (30) minutes, or by requiring them to perform work
5 during breaks.

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

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

18 **FOURTH CAUSE OF ACTION**

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

20 **(Against All Defendants)**

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

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

26 75. Class Members consistently worked consecutive four (4) hour shifts and were
27 generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to
28 authorize and permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC

1 Wage Order, Class Members were entitled to paid rest breaks of not less than ten (10) minutes for
2 each consecutive four (4) hour shift, and Defendants failed to provide Class Members with timely
3 rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants
4 placed their needs over Class Members lawful rest breaks and this resulted in Class Members
5 consistently having to work through their scheduled rest breaks because the demands of the job
6 would not avail them the opportunity to take a lawfully uninterrupted and off-duty rest break.
7 Thus, Class Members were consistently denied of their rest breaks.

8 76. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
9 provide that if an employer fails to provide an employee rest period in accordance with this
10 section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
11 compensation for each workday that the rest period is not provided.

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

15 78. Defendants failed to authorize and permit Class Members to take rest periods, as
16 required by the Labor Code. Moreover, Defendants did not compensate Class Members with an
17 additional hour of pay at each Class Member's effective hourly rate for each day that Defendants
18 failed to provide them with adequate rest breaks, as required under Labor Code § 226.7.

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

24 **FIFTH CAUSE OF ACTION**
25 **VIOLATION OF LABOR CODE § 226(a)**
26 **(Against All Defendants)**

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

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

8 82. Defendants failed to provide Class Members with accurate itemized wage
9 statements in writing, as required by the Labor Code. Specifically, the wage statements fail to
10 include the total hours worked and do not comply with Labor Code § 226(a)(2). Additionally, the
11 wage statements given to Class Members failed to incorporate non-discretionary bonuses and/or
12 commissions into the regular rate of pay used to calculate and pay overtime compensation, double
13 time pay, sick pay, and meal and rest break premiums. Thus, the wage statements do not provide
14 accurate hourly rates for overtime and the statements do not comply with Labor Code § 226(a)(9).
15 Additionally, the wage statements given to Class Members failed to accurately account for unpaid
16 wages and overtime because their actual hours worked were under-reported due to off the clock
17 work. Additionally, the wage statements given to Class Members failed to accurately account for
18 premium pay for deficiently provided meal periods and rest breaks.

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

1 Class Members with such timely and accurate wage and hour statements.

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

17 85. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code
18 § 226(a), Class Members suffered injuries, including among other things confusion over whether
19 they received all wages owed them, the difficulty and expense involved in reconstructing pay
20 records, and forcing them to make mathematical computations to analyze whether the wages paid
21 in fact compensated them correctly for all hours worked.

22 86. Pursuant to Labor Code §§ 226(a) and 226(e) and 1174, and the applicable IWC
23 Wage Order, paragraph 7(B), Class Members are entitled to recover the greater of all actual
24 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
25 hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate
26 penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and
27 reasonable attorneys' fees.

28 **SIXTH CAUSE OF ACTION**

1 **VIOLATION OF LABOR CODE § 203**

2 **(Against All Defendants)**

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

5 88. Numerous Class Members are no longer employed by Defendants; they either quit
6 Defendants' employ or were fired therefrom.

7 89. Defendants failed to pay these Class Members all wages due and certain at the time
8 of termination or within seventy-two (72) hours of resignation.

9 90. The wages withheld from these Class Members by Defendants remained due and
10 owing for more than thirty (30) days from the date of separation from employment.

11 91. Defendants failed to pay Class Members without abatement, all wages as defined
12 by applicable California law. Specifically, Class Members were not paid all regular and overtime
13 wages because Defendants failed to pay for all hours worked and required off the clock work.
14 Additionally, Defendants failed to pay premium wages owed for unprovided meal periods and rest
15 periods, as further detailed in this Complaint. Additionally, Defendants failed to incorporate non-
16 discretionary bonuses and/or commissions into the regular rate of pay used to calculate and pay for
17 overtime, double time, sick pay, and meal and rest break premiums. Defendants' failure to pay
18 said wages within the required time was willful within the meaning of Labor Code § 203.

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

22 **SEVENTH CAUSE OF ACTION**

23 **VIOLATION OF LABOR CODE § 204**

24 **(Against All Defendants)**

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

27 94. Labor Code § 204 instructs that: "All wages, ...earned by any person in any
28 employment are due and payable twice during each calendar month, on days designated in

1 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
2 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
3 during which the labor was performed, and labor performed between the 16th and the last day,
4 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
5 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment of
6 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
7 calendar days following the close of the payroll period.” As detailed above, Defendants
8 maintained a consistently applied policy and practice of not paying all wages earned between the
9 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
10 between the 16th and the last day of the month between the 1st and 10th day of the following month.
11 Defendants similarly failed to pay all wages earned by not more than seven calendar days
12 following the close of the payroll period. These failures all arose from either Defendants’ failure to
13 pay for all hours worked or failure to pay all earned commission wages.

14 95. All wages due and owing to Plaintiff and the Class Members, including as required
15 under Labor Code § 510, were therefore not timely paid by Defendants, as addressed in detail
16 above. Additionally, wages required by Labor Code § 1194 and other sections became due and
17 payable to each Class Member in each pay period that he or she was not provided with a meal
18 period or rest period or paid straight or overtime wages or commissions to which he or she was
19 entitled.

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

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

EIGHTH CAUSE OF ACTION

FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174

AND 1174.5

(Against All Defendants)

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

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

100. During the course of Plaintiff's and Class Members' employment, Defendants consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as required by California Labor Code § 1174 by failing to pay Plaintiff and Class Members proper wages, overtime, and premium pay as discussed above.

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

NINTH CAUSE OF ACTION

REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802

(Against All Defendants)

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

103. Under Labor Code § 2802(a) an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge

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

2 104. Defendants have regularly required Plaintiff to incur business expenses in the course
3 of performing her required job duties for Defendants including for cell phone expenses, equipment
4 necessary to complete her job duties, and the cost of home Wifi when Plaintiff was required to work
5 from home. These expenses incurred by Plaintiff and Class Members were necessary and required
6 of them in performing their assigned job duties, but Defendants failed to reimburse Plaintiff and
7 Class Members for all such necessary expenditures. Class Members were not reimbursed for those
8 lawful and necessary work related expenses or losses incurred in direct discharge of their job duties
9 during employment with Defendants and at the direction of the Defendants pursuant to Labor Code
10 § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

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

14 TENTH CAUSE OF ACTION

15 VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

16 (Against All Defendants)

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

19 107. Plaintiff, on behalf of herself, Class Members, and the general public, brings this
20 claim pursuant to Business & Professions Code § 17200 et seq. The conduct of Defendants as
21 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Class
22 Members and the general public. Plaintiff seeks to enforce important rights affecting the public
23 interest within the meaning of Code of Civil Procedure § 1021.5.

24 108. Plaintiff is a "person" within the meaning of Business & Professions Code
25 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
26 relief, restitution, and other appropriate equitable relief.

27 109. Business & Professions Code § 17200 et seq. prohibits unlawful and unfair
28 business practices. By the conduct alleged herein, Defendants' practices were deceptive and

1 fraudulent in that Defendants' policy and practice failed to provide the required amount of
2 compensation for missed meal and rest breaks, and failed to adequately compensate Class
3 Members for all hours worked, due to systematic business practices as alleged herein that cannot
4 be justified, pursuant to the applicable California Labor Code and Industrial Welfare Commission
5 requirements in violation of California Business and Professions Code §§ 17200, *et seq.*, and for
6 which this Court should issue injunctive and equitable relief, pursuant to California Business &
7 Professions Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

27 114. By the conduct alleged herein, Defendants have engaged and continue to engage in
28 a business practice which violates California and federal law, including but not limited to, the

1 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
2 Code including Sections 203, 204, 226, 226.7, 512, 1194, 1197, and 1198, for which this Court
3 should issue declaratory and other equitable relief pursuant to California Business & Professions
4 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
5 competition, including restitution of wages wrongfully withheld.

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

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

15 **ELEVENTH CAUSE OF ACTION**
16 **VIOLATION OF LABOR CODE § 2698, ET SEQ.**
17 **(Against All Defendants)**

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

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

24 3. In failing to pay Aggrieved Employees minimum wages and overtime, not
25 providing proper meal and rest periods, failing to provide accurate wage statements, and failing to
26 Pay Employees upon termination or timely upon resignation, all discussed above, Defendants
27 failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor
28 Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and

1 the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the
2 applicable IWC Wage Orders.

3 4. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
4 for Defendants' violation of Labor Code provisions included under Labor Code 2699.5, including
5 the penalty provisions, without limitation, based, inter alia, on the following California Labor
6 Code sections: 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194,
7 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 *et seq.*

8 5. More specifically, after complying with the notice procedures of Labor Code §
9 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
10 and other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
11 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
12 including as follows:

13 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
14 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
15 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
16 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
17 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
18 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
19 to Labor Code § 2699(g)(1);

20 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
21 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
22 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
23 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
24 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
25 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
26 558, including sections 558(a)(1)-(3), 1199, and 2699(f)(2), and also for attorneys' fees and costs
27 pursuant to Labor Code § 2699(g)(1);

28 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to

1 provide Plaintiff and Aggrieved Employees with accurate, itemized wage statements and failure to
2 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
3 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s)
4 seeking all civil and statutory penalties and wages available and applicable under Labor Code §§
5 226€, 226.3, 558, 1174.5, 1199, 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
6 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
7 providing inaccurate wage statements and failing to maintain records as required under Labor
8 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
9 Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a
10 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
11 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
12 citation, ..."

13 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
14 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
15 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
16 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
17 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
18 § 2699(g)(1);

19 (e) All Alleged Violations of the IWC Wage Orders and Other Labor Code
20 Sections: For any above addressed violation of the applicable provisions of the IWC Wage
21 Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code §
22 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and
23 paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to
24 Labor Code § 2699(g)(1).

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

27 7. (a) Any employer or other person acting on behalf of an employer who
28 violates, or causes to be violated, a section of this chapter or any provision regulating hours and

1 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
2 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
3 pay period for which the employee was underpaid in addition to an amount sufficient to recover
4 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
5 employee for each pay period for which the employee was underpaid in addition to an amount
6 sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid
7 to the affected employee.

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

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

16 10. Plaintiff has exhausted his administrative remedies by sending a certified letter to
17 the LWDA and Defendants postmarked on **October 31, 2024**, addressing in detail the specific
18 provisions of the Labor Code Defendants have violated and addressing the facts and legal theories
19 to support the alleged violations and requested penalties. The LWDA has not provided notice of
20 its intent to investigate the alleged violations within 65 calendar days of the postmark date of the
21 letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed
22 herein and in the PAGA Notice Letter and the original Complaint.

23 **RELIEF REQUESTED**

24 WHEREFORE, Plaintiff prays for the following relief:

- 25 1. For an order certifying this action as a class action;
- 26 2. For compensatory damages in the amount of the unpaid minimum wages for work
27 performed by Class Members and unpaid overtime compensation from at least four (4) years prior
28 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 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;
11. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;
12. 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;
13. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;
14. For other wages and penalties under the Labor Code as may be proven;
15. For all general, special, and incidental damages as may be proven;
16. For an award of pre-judgment and post-judgment interest;

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- 17. For an award providing for the payment of the costs of this suit;
- 18. For an award of attorneys' fees; and
- 19. For such other and further relief as this Court may deem proper and just.

DATED: January 3, 2025

D.LAW, INC.

By: 
David Yeremian
Natalie Haritonian
Matthew J. Carraher
Attorneys for Plaintiff JOEY ADAMS, and
all others similarly situated

DEMAND FOR JURY TRIAL

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

DATED: January 3, 2025

D.LAW, INC.

By: 
David Yeremian
Natalie Haritounian
Matthew Carraher
Attorneys for Plaintiff JOEY ADAMS,
and all others similarly situated

1
2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

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

7 On January 3, 2025, I served the foregoing: **FIRST AMENDED CLASS
ACTION COMPLAINT** on Interested Parties in this action by placing a true copy
8 thereof, enclosed in a sealed envelope, addressed as follows:

9 *Marie Burke Kenny (Bar No. 183640)*
10 marie.kenny@procopio.com
11 *Ashley N. Fasano (Bar No. 324949)*
12 ashley.fasano@procopio.com
13 *PROCOPIO, CORY, HARGREAVES & SAVITCH LLP*
14 *525 B Street, Suite 2200*
15 *San Diego, CA 92101*
16 *Telephone: 619.238.1900*
17 *Facsimile: 619.235.0398*
18 *Attorney for Insurance Company of the West, Agent for Service*

19 *Michael Paul Warnick*
20 *15025 Innovation Dr*
21 *San Diego, CA 92128*
22 *ICW Group Holdings, Inc., Agent for Service*

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

[X] (ELECTRONIC TRANSMISSION) I electronically served the foregoing document in
PDF format. I caused a true copy of the foregoing document(s) listed above to be served by
electronic email transmission at the time shown on each transmission, to each interested party at
the email address(es) shown above. Each transmission was reported as complete and without
error.

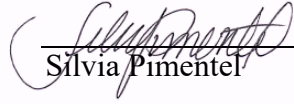
[] (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package
provided by an overnight delivery carrier and addressed to the persons at the address above. I
placed the envelope or package for collection and overnight delivery at an office or a regularly
utilized drop box of the overnight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

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1 **[X]** (STATE) I certify (or declare) under penalty of perjury under the laws of the State of
2 California that the foregoing is true and correct.

3 Executed on January 3, 2025, at Glendale, California.

4 
5 Silvia Pimentel