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on behalf of himself and all others similarly situated

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

12/19/2024

Clerk of the Court

BY: VERA MU

Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

JUSTIN LEWIS, an individual, on behalf of
himself and others similarly situated,

Plaintiff,

vs.

HERMES OF PARIS, INC., a New York
corporation, and DOES 1 through 50,
inclusive,

Defendants.

Case No.: CGC-24-618955

CLASS ACTION

Assigned for All Purposes To:

Hon: Andrew Cheng

Dept.: 613

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for All Hours Worked;
2. Failure to Pay Wages and Overtime under Labor Code § 510;
3. Meal Period Liability, Labor Code § 226.7;
4. Rest-Break Liability, Labor Code § 226.7;
5. Failure to Pay Sick Pay, Labor Code § 246;
6. Violation of Labor Code § 226(a);
7. Violation of Labor Code § 221;
8. Violation of Labor Code § 204;
9. Violation of Labor Code § 203;
10. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
11. Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802;
12. Violation of Business & Professions Code § 17200 *et seq.*; and
13. Penalties under PAGA Labor Code § 2698.

DEMAND FOR JURY TRIAL

Original Complaint Filed: October 15, 2024

Trial Date: None Set

1 Plaintiff JUSTIN LEWIS (hereinafter “Plaintiff”), on behalf of himself and all other
2 similarly situated non-exempt, hourly workers employed by Defendants in California
3 (collectively, “Employees”; individually, “Employee”), complains of Defendants, and each of
4 them, as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of himself and all current and former
7 Employees within the State of California who, at any time four years prior to the filing of this
8 lawsuit, are or were employed as non-exempt, hourly employees by Defendants HERMES OF
9 PARIS, INC., a New York corporation, and DOES 1 through 50 (all defendants being collectively
10 referred to herein as “Defendants”). Plaintiff alleges that Defendants violated various provisions of
11 the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and
12 California Business & Professions Code, and seeks redress for these violations.

13 2. Plaintiff is a resident of California and San Francisco County, and during the time
14 period relevant to this Complaint, worked as a non-exempt, hourly security guard based out of one
15 of Defendants’ facilities and locations in California. He and the other Class members were
16 employed by Defendants as non-exempt, hourly employees at Defendants’ locations and facilities
17 in California, including in positions related to providing retail, sales, custodial, security, and
18 customer services to Defendants and their California customers. Plaintiff worked at Defendants’
19 behest without being paid all wages due and without being provided all required breaks. More
20 specifically, Plaintiff and the other similarly situated Class members were employed by
21 Defendants and shared similar job duties and responsibilities, were subjected to the same policies
22 and practices, and endured similar violations at the hands of Defendants as the other Employees
23 who served in similar and related positions.

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

1 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain
2 under Defendants' control and were not provided with the opportunity to take full uninterrupted,
3 timely, and duty-free rest periods and meal breaks, as required by the Labor Code and the
4 applicable paragraphs of the IWC Wage Orders.

5 4. Defendant HERMES OF PARIS, INC. ("HERMES") is a New York corporation
6 that lists its principal address with the California Secretary of State at 55 East 59th Street, 4th
7 Floor, New York, New York 10022. The wage statements issued to Plaintiff from Defendants,
8 and upon information and belief the other Class members, listed "Hermes of Paris, Inc." as the
9 employer, with a different address of 55 East 59th Street, New York, NY 10022. Plaintiff was
10 employed at Defendants' store location on Grant Avenue in San Francisco, California. The
11 Hermes' website provides the following:

12 "Since 1837, Hermès has remained faithful to its artisanal model and its human
13 values. The freedom to create, the constant quest for beautiful materials, and the
14 transmission of exceptional know-how – which enable the creation of useful, and
15 elegant objects which stand the test of time – forge the uniqueness of Hermès.

16 "Family-run, independent and socially responsible, the company is committed to
17 maintaining the majority of its production in France, through its 60 production
18 and training sites, while developing its international distribution network of 294
19 stores in 45 countries."

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

27 6. The true names and capacities, whether individual, corporate, associate, or
28 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently

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

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

18 **FACTUAL BACKGROUND**

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

1 9. During the course of Plaintiff and the Class members' employment with
2 Defendants, they were not paid all wages they were owed, including for all work performed
3 (resulting in "off the clock" work) and for all their overtime hours worked, or were not paid at
4 the correct rates. This has resulted in systematic and ongoing violations of the California Labor
5 Code and relevant IWC Wage Orders. Upon information and belief, Defendants employ other
6 non-exempt, hourly employees in positions related to security, retail, sales, custodial, and
7 customer services and related work for Defendants.

8 10. For much of his employment, Plaintiff was employed by Defendants as a Security
9 Guard at one of Defendants' locations in San Francisco, California. Plaintiff generally worked over
10 forty or more hours per week, five days per week, which resulted in shifts of approximately eight to
11 ten hours in duration. Plaintiff's shifts were generally scheduled from 8:30 a.m. to 5:00 p.m. or 9:00
12 a.m. to 6:30 p.m..

13 11. The nature of Defendants' operations and its policies and practices require
14 Employees to endure significant off-the-clock work. Defendants' facilities included
15 timekeeping systems incorporating electronic recording of time punches by Employees logging
16 onto Defendants' timekeeping system to record their time entries. However, Plaintiff's hours
17 worked in excess of eight hours per day while enduring a concerted effort by Defendants to
18 avoid paying overtime wages.

19 12. The failure to maintain accurate timekeeping and payroll records perpetrated by
20 Defendants has also been exacerbated by off the clock work Defendants required their
21 Employees to endure. Due to the heavy volume of work, Plaintiff was habitually compelled to
22 work through parts of his meal periods in order to perform and complete his required job duties.
23 Defendants' managers instructed Plaintiff to work beyond five hours before he took a meal
24 period break, but then also instructed him to input a time entry before five hours into the shift.
25 As a result, Defendants endeavored to compel Employees to record timekeeping entries
26 reflecting compliant meal periods and scheduled hours worked, which were less than eight
27 hours, rather than the actual hours they worked performing job duties and remaining under
28 Defendants' control. Plaintiff was also required to remain at his work location during meal and

1 rest breaks and was unlawfully required to remain under Defendants' control or endure
2 interrupted or shortened or untimely meal periods. Plaintiff was thus required at times to clock
3 out for lunch and continue performing job duties rather than being provided with the duty-free
4 meal periods required under the Labor Code. Defendants were also aware that their facilities
5 were understaffed and as a result, Employees were required to work additional hours that were
6 often uncompensated or otherwise underpaid.

7 13. If Plaintiff failed to complete all his work during his scheduled hours, he would
8 be forced to incur overtime hours which Defendants' management frowned upon and rarely
9 authorized. Thus, Plaintiff was forced to work through parts of his meal periods to complete all
10 his work and to avoid incurring any amount of overtime given Defendants policy and practice of
11 neither permitting nor paying overtime hours. These additional hours worked generally went
12 uncompensated despite the fact Plaintiff was under Defendants' control or otherwise required to
13 continue performing job duties or was standing by to perform them. Plaintiff and other
14 Employees' rest breaks were also routinely interrupted or not provided at all due to pressing
15 work demands. Due to understaffing and the heavy volume of work, Plaintiff and his co-
16 workers were generally not authorized and permitted to take rest breaks.

17 14. Defendants followed similar unlawful practices, upon information and belief, in
18 connection with other Employees in a concerted effort to limit and restrict regular and overtime
19 hours earned by and owing to Plaintiff and the other Class members. As a result of Defendants'
20 unlawful policies and practices, and the pervasive uncompensated hours they required
21 Employees to work, Defendants failed to pay Plaintiff and Class members overtime premium
22 wages at the end of work shifts which Defendants did not record in any timekeeping or payroll
23 records. Defendants also required Plaintiff and Class members to use their personal cell phones
24 for work-related activities for texting and responding to calls from supervisors while off- the-
25 clock. Plaintiff and Class members were not paid for this time. Defendants thus both failed to
26 pay overtime hours and failed to compensate them at the correct premium rates.

27 15. Defendants also failed to properly account for bonuses in any overtime, meal
28 penalty, sick period, and rest penalty regular rates at which Defendants paid them. Plaintiff was

1 therefore not paid for all his hours worked at the required minimum, overtime and double time
2 wage rates due to Defendants' policy and practice of requiring him to work off the clock and
3 without pay. With work shifts generally scheduled for eight hours or more, this unpaid off the
4 clock work resulted in Plaintiff and the Class members working past eight hours on a shift,
5 which required that they be paid at the correct overtime rate of 1.5 times their regular rate.
6 Defendants thus systematically underpaid Plaintiff and the Class members by failing to pay
7 them at the required overtime rates for all hours over eight in a work shift or over forty in a
8 work week, and all hours over twelve in a day at the required double time rate. Upon
9 information and belief, the Class members were bound by similar policies which Defendants
10 required them to follow and endured similar violations at Defendants' hands as Plaintiff.

11 16. Defendants failed to incorporate employee bonuses into overtime rates. Upon
12 information and belief, Defendants' wage statements indicate that hours designated as "Fr
13 Exceptional" are paid at the same time as overtime and paid at the rate of exactly 1.5 times the
14 base rate, meaning these "Fr Exceptional" bonuses are not incorporated in the overtime rate.
15 Moreover, upon information and belief, Defendants' wage statements show that "Fr
16 Exceptional" bonuses paid at the same time as sick pay were paid at the base regular rate,
17 meaning the bonuses were once again not incorporated into the sick pay rate.

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

26 18. The failure to pay for all hours worked and underpayment of wages to Plaintiff
27 and the Class members is and has been a direct consequence of Defendants' unlawful
28 compensation policies and practices, which upon information and belief applied uniformly to

1 the Class members working at Defendants' locations and facilities. As a result of the above-
2 described unlawful requirements to work off the clock, the failure to accurately record all hours
3 worked and pay wages at the correct rates, the failure to compensate employees for time under
4 Defendants' control and the other wage violations they endured at Defendants' hands, Plaintiff
5 and the Class members were not properly paid all wages earned and all wages owed to them by
6 Defendants, including when working more than eight hours in any given day and/or more than
7 forty hours in any given week.

8 19. Therefore, from at least four years prior to the filing of this lawsuit and continuing
9 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
10 hours worked and failing to pay minimum wages for all time worked, as required by California
11 law. Defendants thus followed a consistent policy or practice of failing to pay Employees
12 overtime compensation at the correct premium overtime rates for all hours worked in excess of
13 eight hours a day and/or forty hours a week and double-time rates for all hours worked in excess
14 of twelve hours a day, in violation of Labor Code § 510 and the corresponding sections of IWC
15 Wage Orders. To the extent Defendants paid Plaintiff and the Class members bonuses or shift
16 differentials or other forms of remuneration above and beyond their hourly pay, upon
17 information and belief Defendants miscalculated and therefore underpaid overtime they paid
18 during these pay periods by failing to include all forms of remuneration in the regular rate used
19 to calculate and pay overtime.

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

1 21. More specifically, Plaintiff worked shifts that entitled him to at least one meal
2 period, but Defendants' managers required Plaintiff and the Class members to prioritize work
3 over taking lawful meal periods. Constant short-staffing led to systematically late meal periods,
4 and on-duty meal periods that were incessantly interrupted by management demands and
5 required job duties and tasks. The heavy workload and management expectations also
6 contributed to Employees working through meal periods or not taking them or taking them late
7 so work could be accomplished or they were otherwise required to remain under Defendants'
8 control during meal periods.

9 22. Therefore, meal period violations systematically occurred throughout all of
10 Plaintiff's work shifts where Defendants both failed to provide a lawful meal period and failed to
11 provide a meal premium payment. To the extent Defendants ever did pay Plaintiff a meal period
12 premium, they failed to include all forms of remuneration beyond hourly wages in the regular
13 hourly rate used to pay the one-hour premium payment. Upon information and belief, the other
14 Class members were subjected to similar unlawful policies and practices and endured similar
15 violations as Plaintiff.

16 23. Defendants thus failed to provide all the legally required unpaid, off-duty meal
17 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
18 members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
19 members were required to perform work as ordered by Defendants or otherwise remain under
20 Defendants' control for more than five hours during a shift, or ten hours in a shift, but were
21 often required to do so without receiving a lawful, timely, and duty-free 30-minute meal breaks.
22 Additionally, as addressed above, Defendants followed a practice of requiring off the clock
23 work, in a manner that would impact when Employees were to receive meal periods and rest
24 breaks, thus leading to further violations.

25 24. As a result, Defendants' failure to provide Plaintiff and the Class members with
26 all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
27 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants
28 also failed to pay Employees "premium pay," i.e. one hour of wages at each Employee's

1 effective hourly rate of pay, for each meal period or rest break that Defendants failed to provide
2 or deficiently provided. Upon information and belief, if and when Defendants did pay any meal
3 period premiums, they failed to include all forms of remuneration such as bonuses and shift
4 differentials in the regular rate used to calculate and pay it. To the extent Plaintiff and the Class
5 members worked shifts of over ten hours, upon information and belief Defendants failed to
6 provide them with a second required meal period.

7 25. Therefore, for at least four years prior to the filing of this action and through to
8 the present, Plaintiff and the Class members were unable to take off-duty breaks or were
9 otherwise not provided with the opportunity to take required meal breaks due to Defendants'
10 policies and practices. On the occasions when Plaintiff and the Class members were provided
11 with a meal period, it was often untimely or interrupted, or was impermissibly shortened, and
12 Employees were not provided with one hour's wages in lieu thereof. Meal period violations thus
13 occurred in one or more of the following manners:

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

1 26. Defendants also failed to authorize and permit Plaintiff and the Class members to
2 take duty-free, net ten minute rest breaks for every four hours of shift work, or major fraction
3 thereof. There were similar issues with the required net ten-minute rest breaks that Plaintiff and
4 the Class members were unable to take, as with meal periods. Defendants made no efforts or
5 provided no emphasis on authorizing and permitting Employees to take net ten-minute rest
6 breaks for every four hours of work.

7 27. Given the constant and ongoing job demands he faced and Defendants' failure to
8 adequately staff their facilities to permit Employees to take breaks, Plaintiff was compelled to
9 remain on the premises performing job-related duties while also remaining under Defendants'
10 control during times when he was supposed to be enjoying a duty-free rest break. By uniformly
11 requiring Plaintiff and the other similarly situated co-workers to remain under Defendants'
12 control and on premises during rest breaks, Defendants committed systematic and ongoing rest
13 break violations. To the extent Defendants paid any rest break premium payments under Labor
14 Code § 226.7 to Plaintiff or other Class members, these payments failed to include all forms of
15 remuneration in the regular hourly rate at which they were paid.

16 28. Defendants' management did not emphasize the requirement to provide at least
17 one ten-minute duty-free rest period for each four-hour duty period, or major fraction thereof. If
18 and when Plaintiff was permitted to take a ten-minute rest break on a shift, he was not permitted
19 to take a second one or a third one or any breaks were untimely or impermissibly shortened.
20 Further violations occurred as Plaintiff and the Class members were required to remain under
21 Defendants' control by not being able to leave the premises and by Defendants' requirement
22 that they remain ready to respond to work requirements and job demands, thus requiring
23 Employees to unlawfully remain under Defendants' control during rest breaks.

24 29. Defendants thus failed to authorize and permit Class members to take all their
25 required rest breaks. Plaintiff and the other similarly situated Class members were either not
26 authorized, permitted the opportunity to take a rest break, or were required to remain under
27 Defendants' control and respond to instructions and job demands. Defendants also failed to
28 authorize and permit Employees to leave the property premises during rest breaks, or else

1 prevented them from doing so, thus further evidencing Defendants' policy and practice of
2 requiring Plaintiff and the Class members to remain under their control during required off-duty
3 rest breaks.

4 30. Defendants' policies and practices thus systematically deny and denied Plaintiff
5 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal
6 periods. The California Supreme Court has instructed that the rest period requirement obligates
7 employers to permit and authorize employees to take-off-duty rest periods. That is, during rest
8 periods employers must relieve employees of all duties and relinquish control over how
9 employees spend their time. Plaintiff and the Class members were and are under Defendants'
10 control when they are working through rest breaks, and Defendants failed to schedule or
11 account for required first, second, and third rest breaks during the shifts Plaintiff and the Class
12 members generally worked.

13 31. Plaintiff and the Employees in the Class were not authorized and permitted to
14 take lawful rest periods, were systematically required by Defendants to work through or during
15 breaks, and were not provided with one hour's wages in lieu thereof. They were required to
16 remain on duty during breaks or portions of their breaks, thus making them either untimely or
17 shortened and on-duty, and they were also prevented from leaving the premises during rest
18 breaks under Defendants' policies and practices. Rest period violations therefore arose in one or
19 more of the following manners:

20 (a) Class members were required to work without being provided a minimum
21 ten minute rest period for every four hours or major fraction thereof worked
22 and were not compensated one hour of pay at their regular rate of
23 compensation for each workday that a rest period was not provided, and to
24 the extent Defendants paid any premiums, they failed to include all forms
25 of remuneration in the regular rate used to calculate and pay them.

26 (b) Class members were not authorized and permitted to take timely rest
27 periods for every four hours worked, or major fraction thereof; and
28

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

4 32. From at least four years prior to the filing of this lawsuit and continuing to the
5 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting
6 or deducting the Employees' earned wages, including by requiring off the clock work during
7 breaks and before and after work shifts and by miscalculating the regular rate and accordingly
8 underpaying overtime wages and meal and rest break premiums. By not compensating
9 Employees for all hours worked and under Defendants' control at the correct rates, Defendants
10 unlawfully deducted wages earned by and owed to Plaintiff and the Class members, in violation
11 of Labor Code § 221.

12 33. Defendants also violated California Labor Code § 246 by not providing all
13 required paid sick days to Plaintiff and the similarly aggrieved Employees. Labor Code § 246
14 provides that an Employee who "works in California for the same employer for 30 or more days
15 within a year from the commencement of employment is entitled to paid sick days as specified
16 in this section." Paid sick time for nonexempt employees shall be calculated in the same manner
17 as the regular pay rate for the workweek in which the employee uses the paid sick time.
18 Defendants failed to provide Plaintiff and the other similarly Aggrieved Employees with all
19 their required and earned sick days paid at the correct rate of pay, in violation of Labor Code §
20 246. Additionally and upon information and belief, Defendants have failed to provide COVID-
21 19 supplemental sick leave to the Class members during the relevant time period, including by
22 failing to provide two work weeks of COVID-19 supplemental paid sick leave paid at the
23 correct rates as required under Labor Code §§ 248.1 and 248.2 and including damages and
24 penalties as these sections are enforced through Labor Code § 248.5, which requires that: "If
25 paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the
26 employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater,
27 but not to exceed an aggregate penalty of four thousand dollars (\$4,000), shall be included in
28 the administrative penalty." Further, upon information and belief, Defendants' wage statements

1 show that “Fr Exceptional” bonuses paid at the same time as sick pay were paid at the base
2 regular rate so the bonuses were not incorporated into the sick pay rate.

3 34. Plaintiff accordingly seeks this relief available for Defendants’ failure to provide
4 Employees with all their required and earned sick days and all their COVID-19 supplemental
5 sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties
6 available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1,
7 1198, 1199, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to Labor Code §
8 2699(g)(1).

9 35. Upon information and belief, Defendants also failed to provide Employees such
10 as Plaintiff at the time of his employment and thereafter with written notice complying with all
11 the requirements of Labor Code § 2810.5, which provides that: “At the time of hiring, an
12 employer shall provide to each employee a written notice, in the language the employer
13 normally uses to communicate employment-related information to the employee, containing”
14 specifically required information. Upon information and belief, Defendants failed to provide
15 this information to the Class Members as required under Labor Code § 2810.5. Defendants were
16 required to provide Plaintiff and the Class members certain specific information upon hiring
17 pursuant to California Labor Code § 2810.5. Defendants failed to provide Plaintiff with any
18 such information when he was hired, or have failed to produce it, and upon information and
19 belief, Defendants committed similar violations in connection with similarly situated Class
20 members.

21 36. As a result of these illegal policies and practices, Defendants also engaged in and
22 enforced the following additional unlawful practices and policies against Plaintiff and the Class
23 members he seeks to represent:

- 24 (a) failing to pay all wages owed to Class members who either were
25 discharged, laid off, or resigned in accordance with the requirements of
26 Labor Code §§ 201, 202, 203 and 227.3;
- 27 (b) failing to pay all wages owed to the Class members twice monthly in
28 accordance with the requirements of Labor Code § 204;

- 1 (c) failing to pay Class members all wages owed, including all meal and rest
2 period premium wages, and failing to pay them at the regular rate of
3 compensation;
- 4 (d) failing to maintain accurate records of Class members' hours worked and
5 earned wages and meal periods in violation of Labor Code §§ 226 and
6 1174(d) and section 7 of the applicable IWC Wage Orders; and
- 7 (e) failing to produce timekeeping records in response to Plaintiff's timely and
8 lawful request to receive them under these authorities.

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

22 38. Upon information and belief, time clock punches were not maintained or were
23 not accurately maintained for work shifts and meal periods. Defendants also failed to accurately
24 record and pay for all regular and overtime hours worked and submitted by Plaintiff and the
25 Class members, including by failing to pay all overtime hours at the correctly calculated
26 overtime premium rate. Defendants also failed to incorporate employee bonuses into overtime
27 rates. Upon information and belief, Defendants' wage statements indicate that hours designated
28 as "Fr Exceptional" are paid at the same time as overtime and paid at the rate of exactly 1.5

1 times the base rate, so these “Fr Exceptional” bonuses are not incorporated in the overtime rate.
2 Moreover, upon information and belief, Defendants’ wage statements show that “Fr
3 Exceptional” bonuses paid at the same time as sick pay were paid at the base regular rate so the
4 bonuses were not incorporated into the sick pay rate.

5 39. Defendants also failed to accurately list the Total Hours worked on wage
6 statements issued to Plaintiff, and upon information and belief the other Class members,
7 including by including hours and payment entries for items that do not count as hours worked.
8 Defendants have also failed to accurately list the name and address of Plaintiff’s employer on
9 wage statements issued to the Class members, in violation of section 226(a)(8).

10 40. Defendants therefore also provided Plaintiff and the Class members with wage
11 statements that failed to accurately report all hours worked and applicable hourly rates for all
12 hours worked. For the same reasons as explained above, Plaintiff and the Class members were
13 provided with unlawful wage statements that failed to reflect all hours worked and failed to pay
14 for all overtime hours or failed to pay overtime wages at the correct overtime premium rate, and
15 Defendants miscalculated meal and rest break premiums, and sick time if and when they did pay
16 them. Defendants followed this unlawful policy and practice even though both Plaintiff and
17 Defendants were aware that Plaintiff and the Class members worked more total hours than were
18 reflected on the wage statements, including overtime hours, and were underpaid by regular rate
19 miscalculation. Plaintiff and the Employees in the Class were unable to discern from their wage
20 statements alone the actual hours they worked in total during a pay period and the rates they
21 were paid for those hours worked.

22 41. Defendants have thus also failed to comply with Labor Code § 226(a) by
23 inaccurately reporting total hours worked and total wages earned by Plaintiff and the Class
24 members, along with the appropriate applicable rates, among others requirements. Plaintiff and
25 Class members are therefore entitled to penalties not to exceed \$4,000.00 for each employee
26 pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the
27 applicable California IWC Wage Orders by failing to maintain time records showing when the
28 employee begins and ends each work period, meal periods, and wages earned pursuant to Labor

Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked.

42. Defendants also required Plaintiff and the Class members to work hours off the clock for which they were not compensated. They were also required to endure off the clock work addressed above during interrupted or otherwise on-duty meal and rest periods and were not provided with sick pay and supplemental sick leave and were subjected to systematic off the clock work. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday or failed to pay it at the correct rate, as addressed above. Therefore, Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to Plaintiff and other similarly situated Employees at the time of their termination or within seventy-two hours of their resignation, as required by California wage-and-hour laws, including under Labor Code § 203.

43. Additionally, from at least four years prior to the filing of this lawsuit and continuing to the present, Defendants have regularly required Plaintiff and the Class members to incur necessary business expenses in the course of performing their required job duties without reimbursement. These included the use of personal mobile telephones that Defendants required the employees to use for the completion of their job duties. Plaintiff and class members were required to download a “Booksie” application to check people in and out. Plaintiff and the Class members must be reimbursed for these necessary business expenses under Labor Code § 2802, and Defendants systematically failed to do so.

44. In light of the foregoing, Plaintiff and the Employees in the Class bring this action pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4, 226.7, 227.3, 246, 248.1, 248.2, 248.5, 351, 354, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2802, 2810.5, 2698 *et. seq.*, and California Code of Regulations, Title 8, section 11000 *et seq.*

45. 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

46. Plaintiff brings this class action on behalf of himself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as determined by the Court (“the Class Period”), and who have been employed as non-exempt, hourly employees within the State of California.” This includes all hourly positions related to providing security, retail, sales, custodial, and customer services to Defendants and their customers. Plaintiff also 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 Employee’s regular rate of pay in lieu thereof.

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

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

f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members who were subject to Defendants’ policy and/or practice of deducting wages earned from their pay, including by requiring off the clock work.

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

h. Subclass 8. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

i. Subclass 9. Sick-Pay Class: All Class members who, within the applicable limitations period, worked for more than 30 days for Defendants and were not paid for at least one hour of sick time for every 30 hours of work thereafter, or at least 3 days of sick time for every 12-month period.

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

k. Subclass 11. Expenses Reimbursement Class: All Class members who, within the applicable limitations period who incurred business expenses during the Relevant Time Period.

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

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

48. Defendants, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby Defendants failed to correctly calculate and pay compensation for the time worked by Plaintiff and the other members of the Class, even though

1 Defendants enjoyed the benefit of this work, required Employees to perform this work and
2 permitted or suffered to permit this work. Defendants have uniformly denied these Class members
3 wages to which these employees are entitled, and failed to provide meal periods or authorize and
4 permit rest periods, in order to unfairly cheat the competition and unlawfully profit.

5 49. This action has been brought and may properly be maintained as a class action
6 under the provisions of Code of Civil Procedure § 382 because there is a well-defined
7 community of interest in this litigation and the proposed Class is easily ascertainable from the
8 employment records for Plaintiff and the Class members that Defendants are required to
9 maintain under California law.

10 **A. Numerosity**

11 50. The potential members of the Class as defined are so numerous that joinder of all
12 the Class members is impracticable. While the precise number of Class member has not been
13 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
14 time period relevant to this lawsuit employed, at least hundreds of Employees who satisfy the
15 Class definition within the State of California. Plaintiff alleges that Defendants' employment
16 records will provide information as to the number and location of all Class members.

17 **B. Commonality**

18 51. There are questions of law and fact common to the Class that predominate over
19 any questions affecting only individual Class members. The common questions are numerous
20 and substantial and flow from Defendants' uniform policies and/or practices of violating the
21 California Labor Code addressed above. As such, these common questions predominate over
22 individual questions concerning each individual Class Member's showing as to his or her
23 eligibility for recovery or as to the amount of damages. These common questions of law and fact
24 include:

- 25 a. Whether Defendants failed to pay Employees minimum wages;
- 26 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 27 c. Whether Defendants failed to pay Employees overtime as required under Labor
28 Code § 510;

- 1 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
2 IWC Wage Orders, by failing to provide Employees with requisite meal periods
3 or premium pay in lieu thereof;
- 4 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC
5 Wage Orders, by failing to authorize and permit Employees to take requisite rest
6 breaks or provide premium pay in lieu thereof;
- 7 f. Whether Defendants violated Labor Code § 226(a) by providing Employees with
8 inaccurate wage statements and wage statements that omitted many of the Section
9 226(a) requirements.
- 10 g. Whether Defendants violated Labor Code § 221;
- 11 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
12 wages and compensation due and owing at the time of termination of
13 employment;
- 14 i. Whether Defendants' conduct was willful;
- 15 j. Whether Defendants violated Labor Code § 226 and § 1174 and §1198 and the
16 IWC Wage Orders by failing to maintain accurate records of Class members'
17 earned wages and work periods;
- 18 k. Whether Defendants violated Labor Code § 1194 by failing to compensate all
19 Employees during the relevant time period for all hours worked, whether regular
20 or overtime;
- 21 l. Whether Defendants violated Labor Code § 204 by failing to pay Employees all
22 wages earned at least twice monthly;
- 23 m. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not
24 providing employees with all required sick days and COVID-19 supplemental
25 sick leave;
- 26 n. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 27 o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
28

1 p. Whether Employees are entitled to equitable relief pursuant to Business and
2 Professions Code § 17200 *et seq.*

3 **C. Typicality**

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

10 **D. Adequacy of Representation**

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

14 **E. Superiority of Class Action**

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

21 55. As to the issues raised in this case, a class action is superior to all other methods
22 for 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 Employees
2 to vindicate their rights for violations they endured which they would otherwise be foreclosed
3 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

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

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

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

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FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Against All Defendants)

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

60. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with off the clock work, including all the time required to remain on duty and under Defendants' control during breaks and due to the work demands placed upon them by Defendants' management and by paying what should have been overtime hours as regular hours. Defendants' uniformly applied policies required systematic off the clock work and underpayment of all wages owed to Employees over a period of time, while benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class members, including by requiring systematic off the clock work. To the extent any local wage ordinances were also applicable to paying the employees an hourly rate above the minimum wage rate, Defendants failed to comply with the local wage ordinances. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

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

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

1 applicable minimum wage rate fixed by the commission for work during the relevant period is
2 found in the Wage Orders.

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

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

15 65. In committing these violations of the California Labor Code, Defendants
16 inaccurately recorded, or required Plaintiff and the Class members to input times that did not
17 reflect their actual hours worked, or miscalculated hours or rates or otherwise underpaid the
18 actual time worked by Plaintiff and other members of the Class, including by requiring off the
19 clock work as addressed in detail above. Defendants acted in an illegal attempt to avoid the
20 payment of all earned wages, and other benefits in violation of the California Labor Code, the
21 Industrial Welfare Commission requirements and other applicable laws and regulations. As a
22 result of these violations, Defendants also failed to timely pay all wages earned in accordance
23 with California Labor Code § 1194.

24 66. California Labor Code § 1194.2 also provides for the following remedies: “In any
25 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
26 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
27 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”
28

1 67. In addition to restitution for all unpaid wages, pursuant to California Labor Code
2 § 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
3 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
4 pay each employee minimum wages.

5 68. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
6 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid
7 and interest thereon.

8 69. Defendants have the ability to pay minimum wages for all time worked and have
9 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
10 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

11 70. Plaintiff and the Class members are entitled to recover the unpaid minimum
12 wages (including double minimum wages) and local wage ordinance wages and liquidated
13 damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and
14 reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a).
15 Plaintiff and the other members of the Class further request recovery of all unpaid wages,
16 according to proof, interest, statutory costs, as well as the assessment of any statutory penalties
17 against Defendants, in a sum as provided by the California Labor Code and/or other applicable
18 statutes. To the extent minimum wage compensation is determined to be owed to the Class
19 members who have terminated their employment, Defendants' conduct also violates Labor Code
20 §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
21 under California Labor Code § 203, which penalties are sought herein on behalf of these Class
22 members. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and
23 resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate
24 wage statements. Defendants' conduct as alleged herein was willful, intentional, and not in good
25 faith. Further, Plaintiff and other Class members are entitled to seek and recover statutory costs.

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1 **SECOND CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

12 73. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
13 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
14 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular
15 hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40)
16 hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any
17 one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12)
18 hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of
19 work in a workweek.

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

26 75. Defendants thus had a consistent policy of not paying Employees wages for all
27 hours worked, including hours at their required regular, overtime, and double-time rates.
28 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted

1 and/or modified certain employees' hours, including Plaintiff's, or required Plaintiff and the
2 Class members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff
3 and the Class members all earned and owed straight time and overtime wages and other benefits,
4 in violation of the California Labor Code, the California Code of Regulations and the IWC Wage
5 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
6 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt
7 employees to work through meal periods or remain under Defendants' control when they were
8 required to be clocked out or to otherwise work off the clock to complete their daily job duties
9 and respond to demands from customers and managers.

10 76. Therefore, Employees were not properly compensated, nor were they paid
11 overtime rates for hours worked in excess of eight hours in a given day, and/or forty hours in a
12 given week. Based on information and belief, Defendants did not make available to Employees a
13 reasonable protocol for correcting time records when Employees worked overtime hours or to fix
14 incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's
15 detriment. Defendants have also violated these provisions by requiring Plaintiff and other
16 similarly situated Class members to work through meal periods when they were required to be
17 clocked out or to otherwise work off the clock to complete their daily job duties.

18 77. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
19 regular wages owed and overtime compensation for all hours worked, as required by California
20 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the
21 applicable IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly
22 calculate the regular rate used to calculate and pay overtime, and meal and rest premiums, as
23 addressed above.

24 78. Additionally, Labor Code § 558(a) provides "any employer or other person
25 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter
26 or any provisions regulating hours and days of work in any order of the IWC shall be subject to
27 a civil penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee
28 for each pay period for which the employee was underpaid in addition to an amount sufficient

1 to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for
2 each underpaid employee for each pay period for which the employee was underpaid in
3 addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to
4 this section shall be paid to the affected employee.” Labor Code § 558(c) states, “the civil
5 penalties provided for in this section are in addition to any other civil or criminal penalty
6 provided by law.” Defendants have violated provisions of the Labor Code regulating hours and
7 days of work as well as the IWC Wage Orders. Accordingly, Plaintiff and the Class members
8 seek the remedies set forth in Labor Code § 558.

9 79. Defendants’ failure to pay compensation in a timely fashion also constituted a
10 violation of California Labor Code § 204, which requires that all wages shall be paid
11 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
12 violation of that provision of the California Labor Code, Defendants have failed to pay all
13 wages and overtime compensation earned by Employees. Each such failure to make a timely
14 payment of compensation to Employees constitutes a separate violation of California Labor
15 Code § 204.

16 80. Employees have been damaged by these violations of California Labor Code §§
17 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally,
18 under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not
19 less than \$100 for causing Employees “to work for longer hours than those fixed, or under
20 conditions of labor prohibited by an order of the commission” or if the employer pays “a wage
21 less than the minimum fixed by an order of the commission” or “violates...any provision of this
22 chapter or any order or ruling of the commission.”

23 81. Consequently, pursuant to the California Labor Code, including Labor Code §§
24 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders,
25 including paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the
26 full amount of all their unpaid wages and overtime compensation for all their hours worked,
27 with interest, plus their reasonable attorneys’ fees and costs, as well as the assessment of any
28 statutory penalties against Defendants, and each of them, and any additional sums as provided

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

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

13 84. Defendants failed to provide Employees with meal periods as required under the
14 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often
15 required to work or to otherwise remain under Defendants' control during meal periods, or
16 Defendants provided them after Employees worked beyond the fifth hour of their shifts or
17 Employees otherwise had them shortened and interrupted by work demands and requirements to
18 perform off the clock work and remain under Defendants' control. Furthermore, upon
19 information and belief, on the occasions when Employees worked more than ten hours in a given
20 shift, they did so without receiving a second uninterrupted thirty-minute meal period as required
21 by law.

22 85. Defendants thus failed to provide Plaintiff and the Class members with meal
23 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
24 including by not providing them with the opportunity to take meal breaks, by providing them late
25 or for less than thirty minutes, or by requiring them to perform work during breaks.

26 86. Moreover, Defendants failed to compensate Employees for each meal period not
27 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
28 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an

1 employee a meal period in accordance with this section, the employer shall pay the employee
2 one (1) hour of pay at the employee's regular rate of compensation for each workday that the
3 meal period is not provided. As detailed above, when Defendants paid any meal period
4 premiums, they upon information and belief underpaid them by miscalculating the regular rate of
5 compensation by not including all forms of remuneration in it. Defendants thus failed to
6 compensate the Employees in the Class for each meal period not provided or inadequately
7 provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC
8 Wage Order.

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

15 **FOURTH CAUSE OF ACTION**

16 **REST BREAK LIABILITY UNDER LABOR CODE § 226.7**

17 **(Against All Defendants)**

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

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

23 90. Employees consistently worked consecutive four hour shifts and were generally
24 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
25 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
26 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
27 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
28 breaks of not less than ten minutes for each consecutive four hour shift. Defendants made no

1 effort to authorize and permit Plaintiff and the Class members to take lawful rest breaks.

2 Employees were often required to work or to otherwise remain under Defendants' control during
3 rest periods, including by responding to work requirements, and had breaks provided untimely as
4 a result of the above described off the clock work.

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

10 92. Defendants, and each of them, have therefore intentionally and improperly denied
11 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and
12 paragraph 12 of the applicable IWC Wage Orders.

13 93. Defendants failed to authorize and permit Plaintiff and the Class members to take
14 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate
15 Employees with an additional hour of pay at each Employee's hourly rate for each day that
16 Defendants failed to provide them with adequate rest breaks, as required under Labor Code §
17 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders. To the extent Defendants
18 paid any rest break premiums, they upon information and belief, underpaid them by
19 miscalculating the regular rate of compensation by not including all forms of remuneration in it.
20 Defendants thus failed to compensate the Employees in the Class for each rest period not
21 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
22 20 of the applicable IWC Wage Order.

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

28

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PAY PROPER SICK PAY IN VIOLATION OF LABOR CODE § 246**

3 **(Against All Defendants)**

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

6 96. Labor Code Section 246 affords an employee “who works in California for 30 or
7 more days within a year from the commencement of employment [] paid sick days . . . of not less
8 than one hour per every 30 hours worked” and “no less than 24 hours of accrued sick leave or
9 paid time off by the 120th calendar day of employment or each calendar year, or in each 12-
10 month period.”

11 97. Additionally, Subsection (l) of Labor Code § 246 provides: “For the purposes of
12 this section, an employer shall calculate paid sick leave using any of the following calculations:
13 (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the
14 regular rate of pay for the workweek in which the employee uses paid sick time, whether or not
15 the employee actually works overtime in that workweek.”

16 98. Defendants had a common policy and practice of systemically failing to pay
17 Plaintiff and Sick Pay Class Members the requisite sick time pay in accordance with California
18 Law. Specifically, Plaintiff and Sick Pay Class Members worked for Defendants for more than 30
19 days, but were not paid at least one hour of sick pay for every 30 hours of work, or at least 3 days
20 of sick time for every 12 month period of work. Additionally, the sick pay paid to Plaintiff and
21 Sick Pay Class Members did not account for differential pay as well as performance-based non-
22 discretionary bonuses, which were never factored into the rate upon which sick pay was accrued
23 and paid.

24 99. Therefore, Sick Pay Class Members are owed the unpaid balance of said wages
25 pursuant to the Wage order according to proof at trial, interest pursuant to Labor Code §§ 218.6
26 and 1194(a), Civil Code §§ 3287 and § 3289, and reasonable attorneys' fees and costs and/or
27 penalties pursuant to Labor Code § 558(a).
28

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

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

101. 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.

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

103. Throughout the liability period, Defendants intentionally failed to furnish to Plaintiff and the Class members, upon each payment of wages, itemized statements accurately showing: (1) gross wages earned, (2) total hours worked by the employee, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee

1 pursuant to Labor Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst
2 other statutory requirements. Defendants knowingly and intentionally failed to provide Plaintiff
3 and the Class members with such timely and accurate wage and hour statements.

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

20 105. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders,
21 employers are required "to pay each employee, on the established payday for the period
22 involved, not less than the applicable minimum wage for all hours worked in the payroll period,
23 ..." Under Labor Code § 1198, "[t]he employment of any employee for longer hours than those
24 fixed by the order or under conditions of labor prohibited by the order is unlawful." Plaintiff and
25 the Class members may therefore pursue damages and penalties for violations of Labor Code §
26 204 and paragraph 4(B) and paragraph 20 of the applicable IWC Wage Orders.

27 106. Therefore, as a direct and proximate cause of Defendants' violation of Labor
28 Code § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the

1 Employees in the Class suffered injuries, including among other things confusion over whether
2 they received all wages owed them, the difficulty and expense involved in reconstructing pay
3 records, and forcing them to make mathematical computations to analyze whether the wages paid
4 in fact compensated them correctly for all hours worked.

5 107. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
6 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater
7 of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs
8 and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
9 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled
10 to an award of costs and reasonable attorneys' fees.

11 **SEVENTH CAUSE OF ACTION**
12 **VIOLATION OF LABOR CODE § 221**
13 **(Against All Defendants)**

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

16 109. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
17 receive from an employee any part of wages theretofore paid by said employer to said
18 employee." Pursuant to California Labor Code § 204, other applicable laws and regulations, and
19 public policy, an employer must timely pay its employees for all hours worked. Defendants
20 failed to do so.

21 110. Defendants unlawfully received and/or collected wages from the Employees in
22 the Class by requiring off the clock work, by miscalculating overtime, and by not paying one
23 hour of pay at the regular rate of compensation for every meal and rest period violation endured
24 by Plaintiff and the other Class members, as alleged above. By not compensating Employees for
25 all hours worked and meal and rest period premiums, Defendants unlawfully deducted wages
26 earned in violation of Labor Code § 221.

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

EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 201.3 and 204
(Against All Defendants)

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

113. 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 similarly failed to pay all wages earned by not more than seven calendar days following the close of the payroll period.

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

115. Defendants violated Labor Code § 204 by systematically refusing to timely pay wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers are required “to pay each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked

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

6 116. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
7 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
8 to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
9 pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
10 applicable IWC Wage Orders.

11 **NINTH CAUSE OF ACTION**
12 **VIOLATION OF LABOR CODE § 203**
13 **(Against All Defendants)**

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

16 118. Plaintiff and numerous Class members are no longer employed by Defendants;
17 they either quit Defendants' employ or were fired therefrom.

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

20 120. The wages withheld from these Employees by Defendants remained due and
21 owing for more than thirty days from the date of separation from employment. Additionally,
22 Defendants failed to pay Plaintiff her final check at the time of her termination.

23 121. Defendants thus failed to pay Plaintiff and the Class members without abatement,
24 all wages as defined by applicable California law. Among other things, these Employees were
25 not paid all regular and overtime wages, including by Defendants failing to pay for all hours
26 worked or requiring off the clock work or by unlawfully under-recording time entries to the
27 detriment of Employees, and Defendants failed to pay premium wages owed for unprovided
28 meal periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay

1 said wages within the required time was willful within the meaning of Labor Code § 203.

2 122. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders,
3 employers are required “to pay each employee, on the established payday for the period
4 involved, not less than the applicable minimum wage for all hours worked in the payroll period,
5 ...” Under Labor Code § 1198, “[t]he employment of any employee for longer hours than those
6 fixed by the order or under conditions of labor prohibited by the order is unlawful.” Plaintiff and
7 the Class members may therefore pursue damages and penalties for violations of Labor Code §
8 203 and paragraph 4(B) of the applicable IWC Wage Orders, including penalties under
9 paragraph 20 of the applicable IWC Wage Orders. Additionally, under Labor Code § 1199(a)-
10 (c), it is a misdemeanor and Defendants are subject to a fine of not less than \$100 for causing
11 Employees “to work for longer hours than those fixed, or under conditions of labor prohibited by
12 an order of the commission” or if the employer pays “a wage less than the minimum fixed by an
13 order of the commission” or “violates...any provision of this chapter or any order or ruling of the
14 commission.”

15 123. Defendants’ failure to pay wages, as alleged, entitles Plaintiff and these former
16 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of
17 the IWC Wage Orders as addressed above, including the requirement that an employee’s wages
18 shall continue until paid for up to thirty (30) days from the date they were due.

19 **TENTH CAUSE OF ACTION**

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

21 **(Against All Defendants)**

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

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

28

126. During the course of Plaintiff's and Employees' 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 them proper wages, overtime, and premium pay as discussed above and failing to document and pay for actual hours worked.

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

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

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

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

ELEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES, LABOR CODE § 2802

(Against All Defendants)

131. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

132. Labor Code section 2802(a) states: “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Additionally, Defendants have regularly required Plaintiff and the Expense Reimbursement Class members to incur necessary business expenses in the course of performing their required job duties without reimbursement. These included the use of personal mobile telephones that Defendants required the employees to use for the completion of their job duties. Plaintiff and class members were required to download a “Booksie” application to check people in and out. Plaintiff and class members were

1 not reimbursed for these expenses. Plaintiff and class members were also required to respond to
2 text messages and calls from management while both on and off the clock. Plaintiff and
3 Reimbursement Class members must be reimbursed for these necessary business expenses under
4 Labor Code § 2802, and Defendants systematically failed to do so.

5 133. Accordingly, Plaintiff and Expense Reimbursement Class members are entitled to
6 restitution for all unpaid amounts due and owing to within four (4) years of the date of the filing
7 of the Complaint and until the date of entry of judgment.

8 134. Plaintiff, on behalf of himself, and Expense Reimbursement Class members, seeks
9 interest thereon and costs pursuant to Labor Code section 218.6, and reasonable attorneys' fees
10 and costs pursuant to Code of Civil Procedure section 1021.5.

11 **TWELFTH CAUSE OF ACTION**

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

13 **(Against All Defendants)**

14 135. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth
15 in full herein. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
16 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
17 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
18 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
19 the public interest within the meaning of Code of Civil Procedure § 1021.5.

20 136. Plaintiff is a "person" within the meaning of Business & Professions Code
21 § 17204, has suffered injury, and therefore has standing to bring this cause of action for
22 injunctive relief, restitution, and other appropriate equitable relief.

23 137. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
24 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
25 fraudulent in that Defendants' policy and practice failed to provide the required amount of
26 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
27 Class members for all hours worked, due to systematic business practices as alleged herein that
28 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare

1 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
2 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
3 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

23 142. By the conduct alleged herein, Defendants have engaged and continue to engage
24 in a business practice which violates California and federal law, including but not limited to, the
25 applicable Industrial Wage Order(s), the California Code of Regulations, and the California
26 Labor Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this
27 Court should issue declaratory and other equitable relief pursuant to California Business &
28 Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to

1 constitute unfair competition, including restitution of wages wrongfully withheld.

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

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

11 **THIRTEENTH CAUSE OF ACTION**

12 **PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.***

13 **(Against All Defendants)**

14 145. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth
15 in full herein.

16 146. Plaintiff and the Employees in the Class are also aggrieved employees as defined
17 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and
18 either were or are employed by Defendants (“Aggrieved Employees”) during the relevant time
19 period.

20 147. In failing to pay Aggrieved Employees minimum wages and overtime, not
21 providing proper meal and rest periods, failing to provide accurate itemized wage statements,
22 and failing to pay Employees wages upon termination or timely upon resignation, all discussed
23 above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as
24 required under Labor Code § 204. Defendants also failed to maintain records showing accurate
25 hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code §
26 1174 and paragraph 7 of the applicable IWC Wage Orders.

27 148. As such, Employees seek wages and penalties under Labor Code §§ 2698 and
28 2699 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5,

1 including the penalty provisions, without limitation, based, inter alia, on the following
2 California Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512,
3 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 et
4 seq.

5 149. More specifically, after complying with the notice procedures of Labor Code §
6 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
7 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above-
8 addressed underlying claims and seeking penalties as specified by the applicable corresponding
9 provisions, including as follows:

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

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

25 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to
26 provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and
27 failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor
28 Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage

Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code §226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

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

(e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For Defendants' failure to provide Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

1 (g) All Alleged Violations of the IWC Wage Orders and Other Labor Code

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

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

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

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

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

26 151. Plaintiff has exhausted his administrative remedies by submitting a certified letter
27 to the LWDA and Defendants on October 15, 2024 (LWDA-CM-1056361-24) addressing in
28 detail the specific provisions of the Labor Code Defendants have violated and addressing the

1 facts and legal theories to support the alleged violations and requested penalties. The LWDA has
2 not provided notice of its intent to investigate the alleged violations within 65 calendar days of
3 the postmark date of the letter, and Plaintiff adds this claim seeking penalties under the PAGA
4 for the violations addressed herein and in the PAGA Notice letter and the original Complaint.

5 **RELIEF REQUESTED**

6 WHEREFORE, Plaintiff prays for the following relief:

- 7 1. For an order certifying this action as a class action;
- 8 2. For compensatory damages in the amount of the unpaid minimum wages for work
9 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
10 the filing of this action, as may be proven;
- 11 3. For liquidated damages in the amount equal to the unpaid minimum wage and
12 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 13 4. For compensatory damages in the amount of all unpaid wages, including overtime
14 and double-time pay, as may be proven;
- 15 5. For compensatory damages in the amount of the hourly wage made by Employees
16 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
17 years prior to the filing of this action, as may be proven;
- 18 6. For compensatory damages in the amount of the hourly wage made by Employees
19 for each day requisite rest breaks were not provided or were deficiently provided where no
20 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as
21 may be proven;
- 22 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 23 8. For restitution and/or damages and penalties for Defendants' failure to pay all
24 wages due twice monthly under Labor Code § 204, as may be proven;
- 25 9. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;
- 26 10. For penalties under Labor Code § 558, as may be proven;
- 27 11. For restitution and/or damages for all amounts unlawfully withheld from the
28 wages for all class members in violation of Labor Code § 221, as may be proven;

12. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

13. For penalties pursuant to Labor Code § 1174.5, as may be proven;

14. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;

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

16. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;

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

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

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

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

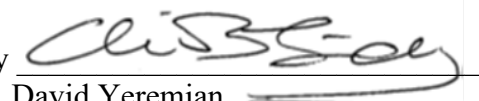
21. For an award of attorneys' fees; and

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

DATED: December 19, 2024

D.LAW, INC.

By



David Yeremian
Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Plaintiff Justin Lewis
and the putative class

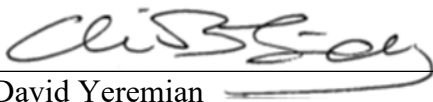
DEMAND FOR JURY TRIAL

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

DATED: December 19, 2024

D.LAW, INC.

By



David Yeremian
Alvin B. Lindsay
Jean Hopkins Power
Attorneys for Plaintiff Justin Lewis
and the putative class

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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., Ste 840, Glendale, CA 91203

Jennifer J. McDermott
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[X] (BY ELECTRONIC SERVICE) I caused the document(s) described herein to be served on the person(s) noted above by electronic mail to their E-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. [Pursuant to Civil Code Procedure 1010.6]

Executed on December 19, 2024, at Glendale, California.

Sasha Zambrano