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on behalf of herself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

BRESHIUNA OTT, on behalf of herself and
others similarly situated,

Plaintiff,

vs.

UNITED MEDICAL MANAGEMENT, INC.
dba VALLEY HEALTHCARE CENTER, a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Rest-Break Liability Under Labor Code § 226.7;
4. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
5. Violation of Labor Code § 226(a);
6. Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5
7. Penalties Pursuant to Labor Code § 203; and
8. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff BRESHIUNA OTT, (hereinafter “Plaintiff”) on behalf of herself and all others
2 similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of herself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants UNITED
8 MEDICAL MANAGEMENT, INC. dba VALLEY HEALTHCARE CENTER, a California
9 corporation; and DOES 1 through 50 (all defendants being collectively referred to herein as
10 “Defendants”). Plaintiff alleges that Defendants, and each of them, 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 therefore.

13 2. Plaintiff is a resident of California and during the time period relevant to this
14 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
15 California at Defendants’ facilities and offices in California. Plaintiff and the other Class members
16 worked for Defendants in San Bernardino County, and in other nonexempt positions, throughout
17 California and, and consistently worked at Defendants’ behest without being paid all wages due.
18 More specifically, Plaintiff and the other similarly situated Class members were employed by
19 Defendants and worked at Defendants’ offices and other facilities where the conduct giving rise to
20 the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff
21 was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was
22 subjected to the same policies and practices, and (3) endured similar violations at the hands of
23 Defendants as the other Employee Class members who served in similar and related positions.

24 3. Defendants required Plaintiff and the Employees in the Class to perform work
25 while remaining under Defendants’ control before and after being on the clock for their daily work
26 shift. Defendants further failed to accurately record time worked by Plaintiff and Employee Class
27 members. Defendants thus failed to pay Plaintiff and the Class members for all hours worked and
28 provided them with inaccurate wage statements that prevented Plaintiff and the Class from

1 learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the Class
2 with lawful rest periods, as employees were not provided with the opportunity to take timely,
3 uninterrupted, and duty-free rest periods as required by the Labor Code.

4 **THE PARTIES**

5 **A. The Plaintiff**

6 4. Plaintiff BRESHIUNA OTT has resided in California and during the time period
7 relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within
8 the State of California.

9 **B. The Defendants**

10 5. Defendant UNITED MEDICAL MANAGEMENT, INC. dba VALLEY
11 HEALTHCARE CENTER is a California corporation with its principle executive offices in Loma
12 Linda, California and has been listed as the employer on Plaintiff's paystubs and personnel file
13 during the relevant time period. UNITED MEDICAL MANAGEMENT, INC. dba VALLEY
14 HEALTHCARE CENTER lists a mailing address in Loma Linda, California with the California
15 Secretary of State and employs Plaintiff and the Class members at Defendants' offices and
16 facilities in San Bernardino, California, and throughout California and conducts business
17 throughout California.

18 6. The true names and capacities, whether individual, corporate, associate, or
19 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
20 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
21 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
22 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
23 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
24 this Complaint to reflect the true names and capacities of the Defendants designated herein as
25 Does 1 through 50 when their identities become known.

26 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
27 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
28 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of

1 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
2 all respects as the employers or joint employers of Employees. Defendants, and each of them,
3 exercised control over the wages, hours or working conditions of Employees, or suffered or
4 permitted Employees to work, or engaged, thereby creating a common law employment
5 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
6 employed Employees.

7 **JURISDICTION AND VENUE**

8 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
9 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
10 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
11 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
12 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
13 obligations and liabilities giving rise to this lawsuit occurred at least in part in San Bernardino
14 County, and Defendants maintain and operate company offices and facilities in San Bernardino
15 County and employ Plaintiff and other Class members in San Bernardino County and throughout
16 California.

17 **FACTUAL BACKGROUND**

18 9. The Employees who comprise the Class and Collective, including Plaintiff, are
19 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
20 Employees who work in nonexempt positions at the direction of Defendants in the State of
21 California. Plaintiff and the Class members were either not paid by Defendants for all hours
22 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically,
23 Plaintiff and Employees were not paid for the time that they worked “pre-shift” and “post-shift”
24 without compensation by assisting clients, helping coworkers with work tasks, waiting to be let
25 inside the premises on occasions when the doors were locked, and waiting to access time clocks in
26 order to clock in at the start of shifts. Moreover, Defendants required Employees to use their
27 personal cell phones to communicate with supervisors and otherwise respond to work demands
28 outside of scheduled work hours, and Employees were not compensated for this time. Plaintiff

1 also contends that Defendants failed to pay Plaintiff and the Class members all wages due and
2 owing, failed to provide rest breaks, and failed to furnish accurate wage statements, all in violation
3 of various provisions of the California Labor Code and applicable Wage Orders.

4 10. During the course of Plaintiff and the Class members' employment with
5 Defendants, they were not paid all wages they were owed, including for all work performed and
6 for all overtime hours worked and were forced to work during their rest breaks. Defendants also
7 failed to maintain timekeeping records for Plaintiff that would permit her to discover the nature
8 and extent of Defendants' unlawful timekeeping practices.

9 11. As a matter of uniform Company policy, Plaintiff and the Class members were
10 required to work during their rest breaks which were not compensated by Defendants in violation
11 of the California Labor Code. Plaintiff and the Class members were also not paid regular wages
12 and overtime for the time they were required to comply with other requirements imposed upon
13 them, which they had to complete while working through their rest breaks and without
14 compensation. As a result, Plaintiff and the Class members worked shifts over eight (8) hours in a
15 day and over forty (40) hours in a work week, but they were not paid at the appropriate overtime
16 rate for all such hours, including by being required to perform work duties and tasks without pay
17 and while off-the-clock. As a result, Plaintiff and the Class members worked substantial overtime
18 hours during their employment with Defendants for which they were not compensated, in
19 violation of the California Labor Code, applicable IWC Wage Orders.

20 12. As a result of the above described daily work demands and pressures to work
21 through breaks as well as the other wage violations they endured at Defendants' hands, Plaintiff
22 and the Class members were not properly paid for all wages earned and for all wages owed to
23 them by Defendants, including when working more than eight (8) hours in any given day and/or
24 more than forty (40) hours in any given week. As a result of Defendants' unlawful policies and
25 practices, Plaintiff and Class members incurred overtime hours worked for which they were not
26 adequately and completely compensated. To the extent applicable, Defendants also failed to pay
27 Plaintiff and the Class members at an overtime rate of 1.5 times the regular rate for the first eight
28 hours of the seventh consecutive work day in a week and overtime payments at the rate of 2 times

1 the regular rate for hours worked over eight (8) on the seventh consecutive work day, as required
2 under the Labor Code, applicable IWC Wage Orders.

3 13. Therefore, from at least four (4) years prior to the filing of this lawsuit and
4 continuing to the present, Defendants had a consistent policy or practice of failing to pay
5 Employees for all hours worked and failing to pay minimum wage for all time worked as required
6 by California Law.

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

13 15. From at least four (4) years prior to the filing of this lawsuit and continuing to the
14 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
15 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
16 Defendants pay Employees premium pay for each day on which requisite rest breaks were not
17 provided or were deficiently provided at one hour of wages at each Employee's effective regular
18 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

19 16. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
20 continuing to the present, Defendants have consistently failed to provide Employees with timely,
21 accurate, and itemized wage statements as required by California wage-and-hour laws.
22 Specifically, the wage statements given to Employees by Defendants failed to accurately account
23 for wages, overtime, and premium pay for deficient rest breaks, all of which Defendants knew or
24 reasonably should have known were owed to Employees, as alleged hereinabove. The wage
25 statements provided to Employees were confusing and required Employees to engage in discovery
26 and refer to outside sources to verify whether their pay was correct, potentially resulting in a
27 miscalculation by the Employees.

28 17. Additionally, from at least four (4) years prior to the filing of this lawsuit, and

1 continuing to the present, Defendants have consistently failed to provide Employees with timely,
2 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

3 18. From at least four (4) years prior to the filing of this lawsuit and continuing to the
4 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
5 performance of their job duties for Defendants, including but not limited to scrubs, personal
6 protective equipment such as facemasks, cleaning supplies such as disinfectant wipes, and the cost
7 of personal cellphone usage, all of which were necessary to perform their duties under
8 Defendants' employ in violation of Labor Code § 2802.

9 19. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
10 continuing to the present, Defendants have consistently failed to keep accurate time and wage
11 records as required by California wage-and-hour laws.

12 20. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
13 to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to
14 Employees at the time of their termination or within seventy-two (72) hours of their resignation, as
15 required by California wage-and-hour laws.

16 21. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
17 Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12,
18 1185, 1194, 1194.2 1197, 1199, and 2802.

19 22. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
20 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
21 enjoyed from their violations of Labor Code.

22 **CLASS ALLEGATIONS**

23 23. Plaintiff brings this class action on behalf of herself and all others similarly situated
24 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows:
25 all individuals employed by Defendants within the State of California at any time within four (4)
26 years of the filing of this lawsuit.

27 24. Further, Plaintiff seeks to represent the following Subclasses composed of and
28 defined as follows:

- 1 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
2 compensated for all hours worked for Defendants at the applicable minimum wage.
- 3 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
4 compensated for all hours worked for Defendants at the required rates of pay, including for all
5 hours worked in excess of eight in a day and/or forty in a week.
- 6 c. Subclass 3. Rest Break Subclass. All Class members who were subject to
7 Defendants' policy and/or practice of failing to authorize and permit Employees to take
8 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
9 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.
- 10 d. Subclass 4. Payroll Records Subclass. All Class members who were subject to
11 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
12 by California wage-and-hour laws.
- 13 e. Subclass 5. Wage Statement Subclass. All Class members who, within the
14 applicable limitations period, were not provided with accurate itemized wage statements.
- 15 f. Subclass 6. Failure to Reimburse for Necessary Business Expenditures. All Class
16 members who were subject to Defendants' failure to reimburse for expenses necessarily incurred
17 in the performance of Employees job duties for Defendants.
- 18 g. Subclass 7. Termination Pay Subclass. All Class members who, within the
19 applicable limitations period, either voluntarily or involuntarily separated from their employment
20 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
21 termination.
- 22 h. Subclass 8. UCL Subclass. All Class members who are owed restitution as a
23 result of Defendants' business acts and practices, to the extent such acts and practices are found to
24 be unlawful, deceptive, and/or unfair.

25 25. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
26 modify the class description with greater particularity or further division into subclasses or
27 limitation to particular issues.

28 26. This action has been brought and may properly be maintained as a class action

under the provisions of Code of Civil Procedure § 382 because there is a well-defined community of interest in litigation and proposed class is easily ascertainable.

A. Numerosity

27. The potential members of the class as defined are so numerous that joinder of all the member of the class is impracticable. While the precise number of class members has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the time period relevant to this lawsuit, employed more than 100 individuals within the State of California.

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

B. Commonality

29. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. These common questions of law and fact include:

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants violated Labor Code § 226.7, and the applicable IWC Wage Orders, by failing to provide Employees with requisite rest breaks or premium pay in lieu thereof;
- e. Whether Defendants violated Labor Code § 226(a);
- f. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- g. Whether Defendants failed to reimburse Employees for necessary business expenses;
- h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;

- 1 i. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
2 j. Whether Employees are entitled to equitable relief pursuant to Business and
3 Professions Code § 17200 *et seq.*

4 **C. Typicality**

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

9 **D. Adequacy of Representation**

10 31. Plaintiff will fairly and adequately represent and protect the interest of Employees.
11 Counsel who represents Employees are experienced and competent in litigating employment class
12 actions.

13 **E. Superiority of Class Action**

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

19 33. Class action treatment will allow those persons similarly situated to litigate their
20 claims in the manner that is most efficient and economical for the parties and the judicial system.
21 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PAY MINIMUM WAGES**

24 **(Against All Defendants)**

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

27 35. Defendants failed to pay Employees minimum wages for all hours worked.
28 Defendants had a consistent policy of misstating Employees time records and failing to pay

1 Employees for all hours worked. Employees would work hours and not receive wages, including
2 as alleged above in connection with working “pre-shift” and “post-shift” without compensation
3 by assisting clients, helping coworkers with work tasks, waiting to be let inside the premises on
4 occasions when the doors were locked, waiting to access time clocks in order to clock in at the
5 start of shifts, and being required to respond to work-related phone calls and texts received while
6 off-the-clock. Defendants thus regularly failed to pay minimum wages to Plaintiff and Class
7 members. Moreover, Defendants did not pay Plaintiff and Employees at the applicable minimum
8 wage for all hours worked. Defendants’ uniform pattern of unlawful wage and hour practices
9 manifested, without limitation, applicable to the Class as a whole, as a result of implementing a
10 uniform policy and practice that denied accurate compensation to Plaintiff and the other members
11 of the Class as to minimum wage pay.

12 36. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
13 states:

14 The minimum wage for employees fixed by the commission is the
15 minimum wage to be paid to employees, and the payment of a less
wage than the minimum so fixed is unlawful.

16 37. The applicable minimum wages fixed by the commission for work during the
17 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
18 therefore entitled to double the minimum wage during the relevant period.

19 38. The minimum wage provisions of California Labor Code are enforceable by private
20 civil action pursuant to California Labor Code § 1194(a) which states:

21 Notwithstanding any agreement to work for a lesser wage, any
22 employee receiving less than the legal minimum wage or the legal
23 overtime compensation applicable to the employee is entitled to
24 recover in a civil action the unpaid balance of the full amount of this
minimum wage or overtime compensation, including interest
thereon, reasonable attorney’s fees and costs of suit.

25 39. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
26 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

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40. California Labor Code § 1194.2 also provides for the following remedies:

In any action under Section 1194 . . . to recover wages because of the payment of a wage less than the minimum wages fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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

42. Wherefore, Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a).

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

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

44. By their conduct, as set forth herein, Defendants violated California Labor Code § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked including time off the clock working “pre-shift” and “post-shift” without compensation by assisting clients, helping coworkers with work tasks, waiting to be let inside the premises on occasions when the doors were locked, waiting to access time clocks in order to clock in at the start of shifts, and being required to respond to phone calls and texts received while off-the-clock. Employees regularly worked over 8 hours on a given day

1 or over 40 hours in a given week without receiving overtime compensation.

2 45. Defendants' failure to pay compensation in a timely fashion also constituted a
3 violation of California Labor Code § 204, which requires that all wages shall be paid
4 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
5 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
6 and overtime compensation earned by Employees. Each such failure to make a timely payment of
7 compensation to Employees constitutes a separate violation of California Labor Code § 204.

8 46. Employees have been damaged by these violations of California Labor Code §§
9 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

10 47. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
11 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
12 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
13 reasonable attorneys' fees and costs.

14 **THIRD CAUSE OF ACTION**

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

16 **(Against All Defendants)**

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

19 49. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
20 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
21 not less than ten (10) minutes for each consecutive four (4) hour shift.

22 50. Defendants failed to provide Employees with timely rest breaks of not less than ten
23 (10) minutes for each consecutive four (4) hour shift. What rest breaks were provided were also
24 not duty-free due to Defendants' policy and practice of interrupting rest breaks with work
25 demands.

26 51. Moreover, Defendants failed to compensate Employees for each rest period not
27 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
28 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in

1 accordance with this section, the employer shall pay the employee one hour of pay at the
2 employee's regular rate of compensation for each workday that the rest period is not provided.
3 Defendants failed to compensate the Employees in the Class for each rest period not provided or
4 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
5 Order. Additionally, as detailed above, when Defendants did pay rest period premiums, they did
6 so at the normal regular rate of pay without factoring in all forms or remuneration/compensation
7 or by otherwise incorrectly calculating the regular rate.

8 52. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
9 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
10 worked without the required rest breaks, a sum to be proven at trial.

11 **FOURTH CAUSE OF ACTION**
12 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**
13 **IN VIOLATION OF LABOR CODE § 2802**
14 **(Against All Defendants)**

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

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

20 55. Employees incurred necessary expenditures in the performance of their job duties
21 for Defendants, including but not limited to scrubs, personal protective equipment such as
22 facemasks, cleaning supplies such as disinfectant wipes, and the cost of personal cellphone usage,
23 all of which were necessary to perform their duties under Defendants' employ. From four (4) years
24 prior to the original filing of this lawsuit and continuing to the present, Defendants consistently
25 failed to reimburse Employees for these necessarily incurred business expenses.

26 56. As a result of the unlawful acts of Defendants, Employees have been deprived of
27 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
28 plus interest and penalties thereon, attorneys' fees, and costs.

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

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

58. 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.

59. Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Employees, by Defendants, failed to accurately account for wages, overtime, and premium pay for deficient rest breaks, and reflected incorrect hours worked, all of which Defendants knew or reasonably should have known were owed to Employees, as alleged hereinabove. The wage statements provided to Employees were confusing and required Employees to engage in discovery and refer to outside sources to verify whether their pay was correct, potentially resulting in a miscalculation by the Employees.

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

61. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not

1 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
2 award of costs and reasonable attorneys' fees.

3 62. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a
4 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for
5 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
6 employee for each pay period.

7 63. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and
8 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be
9 shown according to proof.

10 **SIXTH CAUSE OF ACTION**
11 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**
12 **AND 1174.5**
13 **(Against All Defendants)**

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

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

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

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

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SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 203
(Against All Defendants)

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

69. Numerous Employees are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

70. Defendants failed to pay these Employees all wages due and certain at the time of termination or within seventy-two (72) hours of resignation.

71. The wages withheld from these Employees by Defendants remained due and owing for more than thirty (30) days from the date of separation of employment.

72. Defendants' failure to pay wages, as alleged above, was willful in that Defendants knew wages to be due but failed to pay them; this violation entitles these Employees to penalties under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

EIGHTH CAUSE OF ACTION
VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.*
(Against All Defendants)

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

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

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

1 76. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
2 business practices.

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

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

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

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

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

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

1 disgorgement of such profits as may be necessary to restore Employees to the money Defendants
2 have unlawfully failed to pay.

3 **RELIEF REQUESTED**

4 WHEREFORE, Plaintiff prays for the following relief:

- 5 1. For an order certifying this action as a class action;
- 6 2. For compensatory damages in the amount of the unpaid minimum wages for work
7 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
8 the filing of this action, as may be proven;
- 9 3. For liquidated damages in the amount equal to the unpaid minimum wage and
10 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 11 4. For compensatory damages in the amount of the hourly wage made by Employees
12 for each day requisite rest breaks were not provided or were deficiently provided and where no
13 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
14 be proven;
- 15 5. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 16 6. For penalties pursuant to Labor Code § 226.3, as may be proven;
- 17 7. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
18 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 19 8. For penalties pursuant to Labor Code § 1174.5, as may be proven;
- 20 9. For restitution for unfair competition pursuant to Business & Professions Code
21 § 17200 *et seq.*, including disgorgement or profits, as may be proven;
- 22 10. For compensatory damages in the amount of all previously unreimbursed business
23 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
24 from four (4) years prior to the original filing of this action, as may be proven;
- 25 11. For an order enjoining Defendants and their agents, servants, and employees, and
26 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
27 duties adumbrated in this Complaint;

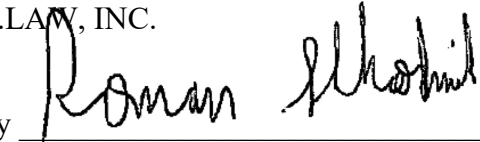
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12. For all general, special, and incidental damages as may be proven;
13. For an award of pre-judgment and post-judgment interest;
14. For an award providing for the payment of the costs of this suit;
15. For an award of attorneys' fees; and
16. For such other and further relief as this Court may deem proper and just.

DATED: October 24, 2024

D.LAW, INC.

By



David Yeremian
Roman Shkodnik
Mason Doidge
Attorneys for Plaintiff
BRESHIUNA OTT
and the putative class

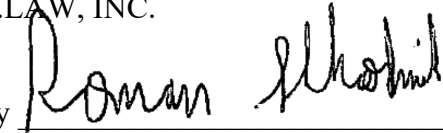
DEMAND FOR JURY TRIAL

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

DATED: October 24, 2024

D.LAW, INC.

By



David Yeremian
Roman Shkodnik
Mason Doidge
Attorneys for Plaintiff
BRESHIUNA OTT
and the putative class