

D.LAW, INC.
Emil Davtyan (SBN 299363)
Emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
Alvin B. Lindsay (SBN 220236)
a.lindsay@d.law
880 E Broadway
Glendale, CA 91205
Telephone: (818) 962-6465
Fax: (818) 962-6469

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 1/4/2024 10:30 AM
Reviewed By: R. Walker
Case #23CV424964
Envelope: 14017849**

Attorneys for Plaintiff ARLEN F. ALCANTAR, on behalf
of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

ARLEN F. ALCANTAR, an individual, on
behalf of herself and others similarly situated,

Plaintiff,

vs.

KIDANGO, INC., a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 23CV424964

CLASS ACTION

Assigned for All Purposes To:
Hon. Charles F. Adams
Dept.: 7

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Labor Code § 226.7;
4. Rest-Break Liability Labor Code § 226.7;
5. Violation of Labor Code § 226;
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5;
10. Failure to Produce Requested Records under §§ 226 and 1198;
11. Failure to Reimburse Necessary Business Expenses under Labor Code § 2802;
12. Violation of Business & Professions Code § 17200 *et seq.* and
13. Civil Penalties under the PAGA, Labor Code § 2698 *et seq.*

DEMAND FOR JURY TRIAL

Original Complaint Filed: October 30, 2023
Trial Date: None Set

1 Plaintiff ARLEN F. ALCANTAR (hereinafter “Plaintiff”), on behalf of herself and other
2 similarly situated non-exempt, hourly employees employed during the relevant period by
3 Defendants in California (collectively, “Employees”; individually, “Employee”), complains of
4 Defendants, and each of them, as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of herself and all current and former
7 Employees within the State of California who, at any time from four years prior to the filing of
8 this lawsuit, are or were employed as non-exempt, hourly Employees, including those employed
9 as an associate teachers, master teachers, teacher aides, lead teachers and in similar and related
10 positions, by Defendants KIDANGO, INC., a California nonprofit corporation, and DOES 1
11 through 50 (all defendants referred to collectively as “Defendants”). Plaintiff alleges that
12 Defendants, and each of them, violated various provisions of the California Labor Code, relevant
13 orders of the Industrial Welfare Commission (“IWC”), and the California Business & Professions
14 Code, and seeks redress for these violations.

15 2. Plaintiff and the Class Members were employed as hourly, non-exempt Employees
16 by Defendants in positions generally pertaining to providing teaching and childcare services to
17 Defendant’ clients. Plaintiff, and upon information and belief the other similarly situated
18 Employees in the Class, were required to perform work tasks based out of Defendants’ schools,
19 day cares, and centers in California. Plaintiff was employed by Defendants as a teacher associate,
20 and Defendants tasked her with duties that included assisting with planning, preparing, and
21 implementing daily program, assisting in planning, and preparing the learning environment,
22 performing primary care giving responsibilities, assisting in maintaining a clean and safe
23 environment, attending meetings as requested, and performing assigned duties.

24 3. Defendants employed other similarly situated Employees as associate teachers,
25 master teachers, teacher aides, lead teachers and in similar and related positions in providing
26 teaching and childcare services to Defendants’ clients (frequently referred to herein as “Students’
27 Parents”) in Fremont, Union City, San Leandro, Hayward, San Jose, Newark, Dublin, Concord,
28 and throughout California. Plaintiff and the other similarly situated Class Members worked at

1 Defendants' behest without being paid all wages due and without being provided all required
2 breaks. More specifically, Plaintiff and the other similarly situated Class Members were employed
3 by Defendants and (1) shared similar job duties and responsibilities (2) were subjected to the same
4 policies and practices (3) and endured similar violations at Defendants' hands.

5 4. Defendants required Plaintiff and the Employees in the Class to work off the clock,
6 but Defendants failed to accurately record the hours they were on the clock, failed to pay them at
7 the appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
8 resignation, and failed to provide Plaintiff and Class Members with accurate itemized wage
9 statements. Defendants also failed to provide Plaintiff and the Class Members with lawful meal
10 and rest periods, as Employees were required to remain under Defendants' control and were not
11 provided with the opportunity to take full uninterrupted and duty-free rest periods and meal
12 breaks, as required by the Labor Code and the applicable paragraphs of the IWC Wage Orders.

13 5. Defendant KIDANGO, INC. is a California corporation which lists its principal
14 address in Fremont, California with the California Secretary of State. The wage statements issued
15 to Plaintiff list "KIDANGO, INC" as her employer with an address in Roseville, California, and
16 upon information and belief the wage statements Defendants issued to the other Class members
17 listed the same employer and address. KIDANGO, INC.'s website claims to be the largest
18 provider of preschool in the Bay Area, and upon information and belief it operates classroom
19 facilities and locations in California including in Fremont, Union City, San Leandro, Hayward,
20 San Jose, Newark, Dublin, and Concord, California.

21 6. This Court has jurisdiction over this Action pursuant to California Code of Civil
22 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
23 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
24 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
25 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
26 obligations and liabilities giving rise to this lawsuit occurred, at least in part in Santa Clara
27 County, as Defendants employ or employed Plaintiff and the Class Members at schools, daycares,
28 and centers throughout the Bay area, including in Santa Clara County.

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

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

FACTUAL BACKGROUND

9. The Employees who comprise the Class, including Plaintiff, are non-exempt employees pursuant to the applicable Wage Order of the Industrial Welfare Commission (“IWC”). During the period of four years prior to the filing of this action through its resolution, the Employee Class Members were employed by Defendants and worked in non-exempt positions at the direction of Defendants in the State of California. Plaintiff and the Class Members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class Members all wages due and owing, including compensation for off the

1 clock work, noncompliant meal and rest breaks, and Defendants' failure to furnish accurate wage
2 statements, all in violation of various provisions of the California Labor Code and applicable
3 paragraphs of the IWC 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 hours they were
6 performing works tasks or remaining under Defendants' control (resulting in "off the clock"
7 work) and for all their overtime hours worked, and they were not paid at the required rates for
8 overtime. This has resulted in systematic and ongoing violations of the California Labor Code
9 and relevant IWC Wage Orders. Upon information and belief, Defendants subjected Plaintiff and
10 the Class Members to similar policies and practices which resulted in similar violations as to the
11 other similarly situated non-exempt, hourly employees based out of their schools, daycares, and
12 centers in California.

13 11. Plaintiff was generally scheduled by Defendants to work five days per week for
14 eight to nine hour shifts. Plaintiff's scheduled shift times generally spanned from at least 6:30
15 a.m. to 3:30 p.m. On many occasions, Plaintiff was required to work longer shifts with and
16 additional couple of hours only if it was approved by Defendants for payment at an overtime
17 premium rate of 1.5 times Plaintiff's hourly rate. In spite of this, Plaintiff was required by
18 Defendants to endure substantial off the clock work before and after her scheduled shift hours. In
19 fact, Plaintiff was explicitly and frequently told by Defendants' Center Director that Plaintiff
20 would not be paid overtime. Wage statements issued by Defendants evidence biweekly pay
21 periods with well over ninety hours worked at the regular rate with no mention of Plaintiff being
22 paid at the correct overtime rate for all hours over eight in a work shift and 40 in a work week.

23 12. Defendants' policy and practice of requiring systematic off the clock work flowed
24 in part from their unlawful timekeeping procedures. Defendants required Plaintiff and the Class
25 members to record timekeeping entries through a mobile application on their personal cell
26 phones. While Defendants required time punch records for shift start and end times and meal
27 period beginning and end times, they were not recorded contemporaneously. Defendants instead
28 modified Plaintiff's timekeeping entries to reduce her hours worked so she would only be paid

1 based on her scheduled shift hours rather than her actual hours worked. Plaintiff recalls receiving
2 payments that reflected her scheduled shift hours, even on occasions where Plaintiff worked
3 substantial hours beyond her scheduled shift end time.

4 13. Defendants also required Plaintiff to be prepared to work prior to her scheduled
5 start time. Plaintiff would generally arrive to work several minutes prior to her scheduled shift
6 start time so she could then clock in at her scheduled shift time throughout her employment with
7 Defendants, and was thus compelled to be under Defendants' control and working off the clock
8 prior to her scheduled shift time. It was also common for Students' Parents to occasionally drop
9 off their children at Defendants' centers prior to Plaintiffs' scheduled shift time, and in such
10 instances, Plaintiff was compelled to begin supervising and caring for the children and tending to
11 her job responsibilities prior to her scheduled start time. Defendants' timekeeping procedures and
12 practices did not account for such off the clock work. In fact, just as she was instructed she would
13 not be paid overtime, Defendants' Center Director informed Plaintiff she would not be paid for
14 hours worked prior to her scheduled start time.

15 14. Moreover, Defendants required that Plaintiff and the Class members to undergo a
16 COVID-related medical screening prior to clocking in at work. Defendants failed to compensate
17 Plaintiff, and upon information and belief the other Class Members, for this mandatory time
18 Defendants required them to remain under Defendants' control during screening procedures and
19 while waiting for this mandatory pre-shift activity to be completed.

20 15. Defendants also required Plaintiff to undergo several hours of off the clock when
21 she was training during the first stages of her employment, as Defendants required her to watch
22 hours of mandatory training videos without compensation. Upon information and belief, Class
23 Members were also subject to Defendants' similarly unlawful training practices and policies that
24 resulted in off the clock work.

25 16. Additionally, Plaintiff received messages, calls, and emails on her personal
26 cellphone during and after work hours regarding work-related matters. Defendants required that
27 Plaintiff and the Class members download and use the "Learning Genie" application on their
28 personal cellphone to communicate with Students' Parents. Plaintiff was therefore frequently

1 engaged off the clock in communicating with Students' Parents using the Learning Genie
2 application and responding to emails and messages using her personal cellphone, which often
3 took up to 2-3 hours per night. Additional systematic off the clock work occurred in the form of
4 Defendants' failure to compensate Plaintiff and the Class members for such off-the-clock
5 communications.

6 17. Plaintiff was also frequently required to respond to work related demands during
7 her meal periods, which often resulted in late meal periods after the fifth hour of work, especially
8 when Defendants were understaffed. In such instances, Plaintiff was compelled to cut her meal
9 periods short and clock back in. Despite this, Plaintiff frequently noticed that her time entries
10 would reflect full 30-minute lunch periods taken before the fifth hour of work. When Plaintiff
11 questioned whether she would be paid for her missed or interrupted meal periods, Defendants'
12 Center Director informed Plaintiff that she would not be compensated and modified Plaintiff's
13 time entries to reflect complaint meal periods.

14 18. Defendants' uniformly applied policies and practices resulted in rampant off the
15 clock work and time shaving, and this in turn resulted in Plaintiff working well over eight hours
16 in her work shifts. Defendants should have paid these hours at the required overtime premium
17 rate, but Defendants' unlawful efforts to write off and minimize overtime hours resulted in further
18 systematic failure to pay all wages at the required rates, including overtime. To whatever extent
19 Defendants paid any of these overtime hours worked, upon information and belief they failed to
20 include all forms of remuneration, such as shift differentials and bonuses, in the regular rate used
21 to calculate and pay the overtime that Defendants did pay.

22 19. Plaintiff was therefore not paid for all her hours worked at the required minimum
23 and overtime wage rates due to Defendants' uniformly applied and unlawful policy and practice
24 of requiring Employees to work off the clock and without pay. Defendants systematically
25 underpaid Plaintiff and the Class Members by failing to pay them at the required overtime rates
26 for all hours over eight in a work shift or over forty in a work week. Upon information and belief,
27 the Class Members were bound by similar scheduling and timekeeping policies and endured
28 similar violations at Defendants' hands as Plaintiff. The above described off the clock work also

1 resulted in Plaintiff not being paid at the correct overtime rate for all her hours worked, as she
2 was paid at a regular hourly rate for time after eight hours when she should have been paid an
3 overtime premium.

4 20. Defendants have either failed to maintain timekeeping records for Plaintiff that
5 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants
6 required and the actual hours Plaintiff worked or the breaks she received or have otherwise
7 declined to produce them to Plaintiff in response to timely and lawful records requests. By failing
8 to pay for all hours worked, and by under-recording regular hours to the detriment of the Class
9 Members, Defendants have committed knowing and intentional ongoing violations of the record
10 keeping requirements under the Labor Code, including section 1174, by either failing to maintain
11 records or maintaining inaccurate ones.

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

20 22. Therefore, from at least four years prior to the filing of this lawsuit and continuing
21 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
22 hours worked and failing to pay minimum wages for all time worked, as required by California
23 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
24 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
25 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
26 week in violation of Labor Code § 510 and the corresponding sections of IWC Wage Orders.

27 23. Defendants also failed to provide Plaintiff and the Class Members with their
28 required meal periods and the at least two ten-minute rest breaks required at a minimum for

1 Plaintiff's scheduled shift durations. The above described off the clock work contributed to
2 Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Class
3 Members, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s).
4 Defendants similarly failed to authorize and permit Plaintiff and the employee Class Members to
5 take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the
6 IWC Wage Order(s).

7 24. More specifically, Plaintiff worked shifts that entitled her to at least one meal
8 period, but as addressed above, Defendants failed to authorize and permit Plaintiff and Class
9 Members to take a full 30-minute lunch breaks. Plaintiff was frequently required to respond to
10 work related demands during her meal periods, especially when Defendants were understaffed. In
11 such instances, Defendants' policies and practices and management pressure compelled her to cut
12 her meal periods short and clock back in well before the end of 30 minutes, but the actual hours
13 were not ultimately reflected in Plaintiff's timekeeping records and the meal period would appear
14 to be compliant. Defendants' practices and procedures, coupled with management expectations,
15 contributed to Employees working through meal breaks or not taking them at all.

16 25. Additionally, Defendants inputted into their timekeeping system that Plaintiff and
17 Class Members took a 30-minute meal period and did so before the fifth hour of work as required
18 under the Labor Code and Wage Orders. Defendants thus recorded compliant meal breaks without
19 regard to whether the meal periods were actually taken, were taken before the fifth hour of work,
20 or were taken in their entirety without interruption.

21 26. Therefore, meal period violations systematically occurred ongoing throughout all
22 of Plaintiff's work shifts where Defendants both failed to provide a lawful meal period or a
23 premium wage payment in lieu thereof, and then also unlawfully deducted 30 minutes from
24 Plaintiff's hours worked for the day. To the extent Defendants did pay Plaintiff and the Class
25 members a meal period premium, upon information and belief Defendant failed to pay them a
26 premium pay of one hour at the regular rate and/or failed to include all forms of remuneration
27 beyond hourly wages in the regular hourly rate used to pay the one-hour premium wage. Upon
28 information and belief, the other Class Members were subjected to similar unlawful policies and

1 practices and endured similar violations as Plaintiff.

2 27. Defendants thus failed to provide all the legally required unpaid, off-duty meal
3 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
4 Members, as required by the applicable Wage Order and Labor Code. Plaintiff and other Class
5 Members were required to perform work as ordered by Defendants for more than five hours
6 during a shift without receiving compliant meal periods. Additionally, as addressed above,
7 Defendants followed a practice of requiring off the clock work in a manner that required
8 Employees to work during breaks, thus leading to further violations.

9 28. Upon information and belief, Defendants' systems did not automatically generate a
10 meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours
11 into a work shift or in the event the time records reflected a meal period of less than thirty minutes.
12 The pay summaries provided by Defendants to Plaintiff failed to reflect any meal and rest period
13 premiums paid to Plaintiff, despite the fact that Defendants failed to provide Plaintiff and the
14 Class Members with all legally required off-duty, unpaid meal periods and all their legally
15 required off-duty, paid rest periods. However, upon information and belief, in the event
16 Defendants did pay any meal period premiums, they did so at the employee's customary regular
17 rate of hourly compensation without including all forms of remuneration in that hourly rate
18 calculation, for example by omitting performance-based bonuses and the like from the rate at
19 which meal premiums were paid.

20 29. As a result, Defendants' failure to provide Plaintiff and the Class Members with all
21 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
22 periods is and will be evidenced by Defendants' business records, or lack thereof. As further
23 detailed above, Defendants also failed to pay Employees "premium pay," i.e., one hour of wages
24 at each Employee's effective regular hourly rate of compensation for each meal period or rest
25 break that Defendants failed to provide or deficiently provided.

26 30. Therefore, from at least four years prior to the filing of this action and through to
27 the present, Plaintiff and the Class Members were unable to take off-duty breaks or were otherwise
28 not provided with the opportunity to take required breaks as required under the Labor Code and

1 Wage Orders due to Defendants' policies and practices. On the occasions when Plaintiff and the
2 Class Members were provided with a meal period, it was often untimely or interrupted, or was
3 impermissibly shortened, and Employees were not provided with one hour's wages in lieu thereof.
4 Meal period violations thus occurred in one or more of the following manners:

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

18 31. Similar violations resulted from Defendants' failure to authorize and permit
19 Plaintiff and the Class Members to take duty-free, net ten minute rest breaks for every four hours
20 of shift work, or major fraction thereof. Plaintiff and the other similarly situated Class Members
21 were required to remain under Defendants' control and respond to job demands during rest breaks
22 and if they ever received a first break, they were neither authorized nor permitted the opportunity
23 to take a second or third rest break. In fact, Defendants implemented a written policy prohibiting
24 employees from leaving the premises during their rest breaks, thus requiring Employees to
25 unlawfully remain under their control during what was supposed to be duty free and
26 uninterrupted rest break time.

27 32. While Defendants made some effort to schedule one ten-minute rest break on
28 some work shifts, it was often untimely and was frequently interrupted by work-related demands.

1 In fact, Plaintiff was required to remain on premise during her rest breaks in order to be readily
2 available to respond to work-related demands. Moreover, second and third 10-minute rest breaks
3 were neither scheduled nor contemplated by Defendants. Plaintiff cannot recall a time during her
4 employment with Defendants where she took a second or third break, despite being entitled to
5 receive at least two paid, timely, uninterrupted, and duty-free net ten-minute rest breaks during
6 each of her work shifts, and three on the occasions when she worked over ten hours on a shift.

7 33. Defendants' uniformly applied policies and practices thus typically resulted in a
8 failure to authorize and permit rest breaks. Plaintiff and the Class Members worked shifts of at
9 least eight hours, which required them to receive at least two rest breaks, and often worked shifts
10 over ten hours, which required at least three rest breaks. On these occasions, Defendants failed to
11 authorize or permit Plaintiff and other Class Members to take a second and third rest break.

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

- 23 (a) Class Members were required to work without being provided a minimum
24 ten minute rest period for every four hours or major fraction thereof worked
25 and were not compensated one hour of pay at their regular rate of
26 compensation for each workday that a rest period was not provided;
- 27 (b) Class Members were not authorized and permitted to take timely rest periods
28 for every four hours worked, or major fraction thereof; and

1 (c) Class Members were required to remain on-duty during rest periods or
2 otherwise had their rest periods interrupted by work demands.

3 35. From at least four years prior to the filing of this lawsuit and continuing to the
4 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
5 deducting the Employees' earned wages, including by the above described off the clock work and
6 on-duty work while on unpaid meal breaks. In addition to failing to authorize and permit rest
7 breaks, Defendants unlawfully deducted up to 30 minutes for meal periods that were rarely fully
8 provided or otherwise received without violation. Thus, by deducting 30 minutes for a meal period
9 that was generally not lawfully provided, Defendants effectively and unlawfully deducted at least
10 30 minutes of hours worked from each Employee's daily work shifts. By not compensating
11 Employees for all hours worked, including at the required wage rates, Defendants unlawfully
12 deducted wages earned in violation of Labor Code § 221.

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

1 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246,
2 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees
3 and costs pursuant to Labor Code § 2699(g)(1).

4 37. As a result of these illegal policies and practices, Defendants also engaged in and
5 enforced the following additional unlawful practices and policies against Plaintiff and the Class
6 Members she seeks to represent:

- 7 a. failing to pay all wages owed to Class Members who either were discharged, laid
8 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202,
9 203;
- 10 b. failing to pay all wages owed to the Class Members twice monthly in accordance
11 with the requirements of Labor Code § 204;
- 12 c. failing to pay Class Members all wages owed, including all meal and rest period
13 premium wages, and failing to pay them at the regular rate of compensation;
- 14 d. failing to maintain accurate records of Class Members' hours worked and earned
15 wages and meal periods in violation of Labor Code §§ 226 and 1174(d) and section
16 7 of the applicable IWC Wage Orders; and
- 17 e. failing to produce timekeeping records in response to Plaintiff's timely and lawful
18 request to receive them under these authorities.

19 38. Defendants have also consistently failed to provide Class Members with timely,
20 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,
21 including by the above-described requirement of off the clock work, failure to pay all overtime
22 and failure to pay all wages at the appropriate premium rates, along with failure to pay premium
23 wages for unprovided or otherwise unlawful meal and rest breaks, or by miscalculating any
24 overtime or meal period or rest break premium wages and by the systematic and unlawful
25 deductions Defendants took from Employee wages. Defendants have also made it difficult to
26 account with precision for the unlawfully withheld wages and meal and rest period compensation
27 owed to Plaintiff and the Class, during the liability period, including to the extent they required off
28 the clock work or automatically deducted hours or failed to pay overtime wages at the overtime

1 rate and to the extent they did not implement and preserve a record-keeping method as required for
2 non-exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the
3 applicable California Wage Orders. Upon information and belief, recorded hours worked were not
4 maintained or were not accurately maintained for work shifts and meal periods, which were
5 automatically presumed by Defendants to have been lawfully provided when they were not.
6 Defendants also failed to accurately record and pay for all regular and overtime hours worked and
7 submitted by Plaintiff and the Class Members, including by failing to pay all overtime hours
8 worked and/or failing to pay it at the correctly calculated overtime premium rate.

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

18 40. Defendants also required Plaintiff and the Class Members to work hours off the
19 clock before and after their shifts for which they were not compensated. As addressed above,
20 Employees were required to endure off the clock work during the on-duty meal and rest periods
21 and were not provided with sick pay and supplemental sick leave and were subjected to systematic
22 off the clock work. Defendants also failed to pay all overtime premium wages owed for work
23 conducted on a work shift and a workday or failed to pay it at the correct rate, as addressed above.
24 Therefore, Defendants have also followed a uniform and consistent policy of failing to pay all
25 wages owed to Plaintiff and other similarly situated Employees at the time of their termination or
26 within seventy-two hours of their resignation, as required by California wage-and-hour laws,
27 including Labor Code § 203.

28 41. Additionally, from at least four years prior to the filing of this lawsuit and

1 continuing to the present, Defendants have regularly required Plaintiff and the Class Members to
2 incur necessary business expenses in the course of performing their required job duties without
3 reimbursement. These include the cell phone-related expenses Plaintiff incurred in responding to
4 messages and calls from Defendants. Moreover, Plaintiff was required to download and use a
5 timekeeping application on her personal cellphone. Plaintiff was also required to download the
6 “Learning Genie” application on her personal cellphone to communicate with Students’ Parents
7 and Defendants’ staff. Upon information and belief, the other Class members endured similar
8 violations at Defendants’ hands as Plaintiff, and they must be reimbursed for these necessary
9 business expenses under Labor Code § 2802. Defendants systematically failed to do so.

10 42. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
11 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.4,
12 226.7, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,
13 1194.2 1197, 1198, 1198.5, 1199, and 2802, 2698 et seq., and California Code of Regulations,
14 Title 8, section 11000 *et seq.*

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

19 **CLASS ALLEGATIONS**

20 44. Plaintiff brings this class action on behalf of herself and all others similarly situated
21 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (often referred to as
22 “the Class” or “Class Members”) defined as follows: “All individuals employed by Defendants at
23 any time during the period of four (4) years prior to the filing of this lawsuit and ending on a date
24 as determined by the Court (“the Class Period”), as non-exempt, hourly employees by Defendants
25 within the State of California.” Further, Plaintiff seeks to represent the Subclasses composed of
26 and defined as follows:

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

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

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

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

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

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

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

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

23 i. Subclass 9. Failure To Produce Requested Employment Records Subclass. All
24 Class Members who, within the applicable limitations period, were denied the right to inspect and
25 receive all their payroll records, timecards, and personnel records.

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

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

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

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

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

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

25 **A. Numerosity**

26 48. The potential members of the class as defined are so numerous that joinder of all
27 the member of the class is impracticable. While the precise number of Class Member has not been
28 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the

1 time period relevant to this lawsuit employed, at least over one hundred Employees who satisfy
2 the Class definition within the State of California. Plaintiff alleges that Defendants' employment
3 records will provide information as to the number and location of all Class Members.

4 **B. Commonality**

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

- 11 a. Whether Defendants failed to pay Employees minimum wages;
- 12 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 13 c. Whether Defendants failed to pay Employees overtime as required under Labor
14 Code § 510;
- 15 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
16 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
17 premium pay in lieu thereof;
- 18 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
19 Orders, by failing to authorize and permit Employees to take requisite rest breaks
20 or provide premium pay in lieu thereof;
- 21 f. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not
22 providing employees with all required sick days and COVID-19 supplemental sick
23 leave;
- 24 g. Whether Defendants violated Labor Code § 226(a) by providing Employees with
25 inaccurate wage statements;
- 26 h. Whether Defendants violated Labor Code § 221;
- 27 i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
28 wages and compensation due and owing at the time of termination of employment;

- j. Whether Defendants' conduct was willful;
- k. Whether Defendants violated Labor Code § 226 and § 1174 and § 1198 and the IWC Wage Orders by failing to maintain accurate records of Class Members' earned wages and work periods;
- l. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- m. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;
- n. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business expenses incurred by Employees;
- o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- p. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

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

D. Adequacy of Representation

51. Plaintiff will fairly and adequately represent and protect the interest of the Employee Class Members. Counsel who represents Plaintiff and the Employees in the Class are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

52. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and

1 questions of law and fact common to all Employees predominate over any questions affecting only
2 individual Employees. Each Employee in the Class has been damaged and is entitled to recovery
3 by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

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

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

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

agreements and policies and practices on the Employees and Class as a whole.

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

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

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

57. 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 by the unlawful deduction of hours or 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

1 wage pay.

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

7 59. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
8 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
9 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The
10 applicable minimum wage rate fixed by the commission for work during the relevant period is
11 found in the Wage Orders.

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

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

24 62. In committing these violations of the California Labor Code, Defendants
25 inaccurately recorded, or required Plaintiff and the Class Members to input times that did not
26 reflect their actual hours worked, or miscalculated hours or rates or otherwise underpaid the actual
27 time worked by Plaintiff and other members of the Class, including by requiring off the clock
28 work as addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of

1 all earned wages, and other benefits in violation of the California Labor Code, the Industrial
2 Welfare Commission requirements and other applicable laws and regulations. As a result of these
3 violations, Defendants also failed to timely pay all wages earned in accordance with California
4 Labor Code § 1194.

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

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

13 65. Pursuant to California Labor Code § 1194.2, Plaintiff and Class Members are
14 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
15 interest thereon.

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

19 67. Plaintiff and the Class Members are entitled to recover the unpaid minimum
20 wages and local wage ordinance wages and liquidated damages in an amount equal to the
21 minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of
22 suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of the Class
23 further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well
24 as the assessment of any statutory penalties against Defendants, in a sum as provided by the
25 California Labor Code and/or other applicable statutes. To the extent minimum wage
26 compensation is determined to be owed to the Class Members who have terminated their
27 employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202, and therefore
28 these individuals are also be entitled to waiting time penalties under California Labor Code § 203,

1 which penalties are sought herein on behalf of these Class Members. Defendants' failure to timely
2 pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code §
3 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as
4 alleged herein was willful, intentional, and not in good faith. Further, Plaintiff and other Class
5 Members are entitled to seek and recover statutory costs.

6 **SECOND CAUSE OF ACTION**

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

8 **(Against All Defendants)**

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

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

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

25 71. Defendants had a consistent policy of not paying Employees wages for all
26 hours worked, including by requiring off the clock work as addressed above, by unlawful
27 deductions, by under-reporting actual hours worked, and by requiring Employees to do so as well.
28 Defendants have also failed to include all forms of remuneration in the regular rate of pay used to

1 calculate and pay overtime and failed to begin paying overtime when it was incurred due to the off
2 the clock work, or otherwise simply failed to pay overtime premium wages for all hours over eight
3 in a shift and forty in a week, as detailed above.

4 72. Defendants thus had a consistent policy of not paying Employees wages for all
5 hours worked, including hours at their required regular and overtime rates. Defendants, and each
6 of them, have intentionally and improperly rounded, changed, adjusted and/or modified certain
7 employees' hours, including Plaintiff's, or required Plaintiff and the Class Members to do so, or
8 otherwise caused them to work off the clock to avoid paying Plaintiff and the Class Members all
9 earned and owed straight time and overtime wages and other benefits, in violation of the
10 California Labor Code, the California Code of Regulations and the IWC Wage Orders and
11 guidelines set forth by the Division of Labor Standards and Enforcement. Defendants have also
12 violated these provisions by requiring Plaintiff and other similarly situated non-exempt employees
13 to work through meal periods or remain under Defendants' control when they were required to be
14 clocked out or to otherwise work off the clock to complete their daily job duties and respond to
15 demands from Defendants' management.

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

24 74. Defendants' failure to pay Plaintiff and the Class Members the unpaid balance
25 of regular wages owed and overtime compensation for all hours worked, as required by
26 California law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the
27 applicable IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly
28 calculate the regular rate used to calculate and pay overtime, and meal and rest premiums, as

1 addressed above.

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

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

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

28 78. Consequently, pursuant to the California Labor Code, including Labor Code

1 §§ 204, 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders,
2 including paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full
3 amount of all their unpaid wages and overtime compensation for all their hours worked, with
4 interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory
5 penalties against Defendants, and each of them, and any additional sums as provided by the
6 Labor Code and/or other statutes.

7 **THIRD CAUSE OF ACTION**

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

9 **(Against All Defendants)**

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

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

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

26 82. Defendants thus failed to provide Plaintiff and the Class Members with meal
27 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
28 including by not providing them with the opportunity to take meal breaks, by providing them late

1 or for less than thirty minutes, or by requiring them to perform work during breaks.

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

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

19 **FOURTH CAUSE OF ACTION**

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

21 **(Against All Defendants)**

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

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

27 87. Employees consistently worked consecutive four hour shifts and were generally
28 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and

1 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
2 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for
3 each consecutive four hour shift, and Defendants failed to provide Employees with timely rest
4 breaks of not less than ten minutes for each consecutive four hour shift. Defendants made little
5 effort to schedule or otherwise authorize and permit Plaintiff and the Class Members to take
6 lawful rest breaks. Employees were often required to work or to otherwise remain under
7 Defendants' control during rest periods, including by responding to work requirements and having
8 breaks provided untimely as a result of the above described off the clock work. Plaintiff and the
9 Class Members were also not permitted to leave their work premises during rest breaks.

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

14 89. Defendants, and each of them, have therefore intentionally and improperly
15 denied rest periods to Plaintiff and the Class Members in violation of Labor Code §§ 226.7 and
16 512 and paragraph 12 of the applicable IWC Wage Orders.

17 90. Defendants failed to authorize and permit Plaintiff and the Class Members to
18 take rest periods, as required by the Labor Code. Moreover, Defendants did not compensate
19 Employees with an additional hour of pay at each Employee's hourly rate for each day that
20 Defendants failed to provide them with adequate rest breaks, as required under Labor Code §
21 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders.

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

27 ///

28 ///

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

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

93. 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.

94. 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 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.

95. 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, (3) the number of piece-rate units earned and any applicable piece rate paid on a piece-rate basis, (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 pursuant to Labor

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

4 96. 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 by
6 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 and
15 address of the employer and, (iv) The name of the employee and only the last four digits of his or
16 her social security number or an employee identification number other than a social security
17 number. For purposes of Labor Code § 226(e) "promptly and easily determine" means a
18 reasonable person [i.e. an objective standard] would be able to readily ascertain the information
19 without reference to other documents or information.

20 97. 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 involved,
22 not less than the applicable minimum wage for all hours worked in the payroll period, ..." Under
23 Labor Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the
24 order or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class
25 Members may therefore pursue damages and penalties for violations of Labor Code § 204 and
26 paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the
27 applicable IWC Wage Orders.

28 98. Therefore, as a direct and proximate cause of Defendants' violation of Labor

1 Code § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees
2 in the Class suffered injuries, including among other things confusion over whether they received
3 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
4 forcing them to make mathematical computations to analyze whether the wages paid in fact
5 compensated them correctly for all hours worked.

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

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

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

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

22 102. Defendants unlawfully received and/or collected wages from the Employees in
23 the Class by requiring off the clock work, by miscalculating or not paying overtime, and by
24 automatically deducting time for meal periods when they were not lawfully provided and not
25 paying one hour of pay at the regular rate of compensation for every meal and rest period violation
26 endured by Plaintiff and the other Class Members, as alleged above. In addition to failing to
27 authorize and permit rest breaks, Defendants unlawfully deducted up to 30 additional minutes
28 meal periods that were rarely provided or otherwise received without violation. Defendants

effectively and unlawfully deducted at least 30 minutes of hours worked from each Employee's daily work shifts. In order to avoid overtime, Defendants would also modify Plaintiffs' clock in times to make record of a complaint meal period. By not compensating Employees for all hours worked, Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

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

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

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

105. 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.

106. 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

1 employee in each pay period that he or she was not provided with a meal period or rest period or
2 paid straight or overtime wages to which he or she was entitled.

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

12 108. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks
13 to represent have been deprived of wages in amounts to be determined at trial, and they are
14 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
15 pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
16 applicable IWC Wage Orders.

17 **EIGHTH CAUSE OF ACTION**
18 **VIOLATION OF LABOR CODE § 203**
19 **(Against All Defendants)**

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

22 110. Plaintiff and numerous Class Members are no longer employed by Defendants;
23 they either quit Defendants’ employ or were fired therefrom.

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

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

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

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

21 115. Defendants' failure to pay wages, as alleged, entitles Plaintiff and these former
22 Employee Class Members to penalties under Labor Code § 203 and the applicable paragraphs of
23 the IWC Wage Orders as addressed above, including the requirement that an employee's wages
24 shall continue until paid for up to thirty (30) days from the date they were due.

25 ///

26 ///

27 ///

28 ///

1 **NINTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

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

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

17 120. Defendants have maintained a common unlawful policy and practice of failing
18 to accurately record all hours worked and all meal period start and end times and by adjusting or
19 otherwise rounding and shaving them down. Defendants also manipulated timekeeping records to
20 reflect less time worked or to shift time to avoid premiums.

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

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

25 **TENTH CAUSE OF ACTION**

26 **FAILURE TO PRODUCE REQUESTED RECORDS, LABOR CODE §§ 226 and 1198**

27 **(Against All Defendants)**

28 123. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set

1 forth in full herein.

2 124. Pursuant to California Labor Code § 226, current and former employees have
3 the right to inspect or receive a copy of their records pertaining to their employment, upon
4 reasonable request to their employer. Under this statute, an employer that receives a request to
5 inspect or receive a copy of records pertaining to a current or former employee must comply with
6 the request as soon as practicable, but no later than twenty-one calendar days from the date of the
7 request.

8 125. Pursuant to California Labor Code § 1198.5(a), every current and former
9 employee, or his or her representative, has the right to inspect and receive a copy of the personnel
10 records that the employer maintains relating to the employee's performance or to any grievance
11 concerning the employee. Under this statute, upon written request from a current or former
12 employee or his or her representative, an employer must make the contents of those personnel
13 records available for inspection or provide a copy of the personnel records to the current or former
14 employee, or his or her representative, not later than thirty calendar days from the date t2he
15 employer receives the written request, subject to some limited exceptions. Failure to comply with
16 these requests allows for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor
17 Code §§ 1198.5(k) and 226(f).

18 126. Plaintiff sent written requests on April 14, 2023 through her counsel to
19 Defendants for her payroll records, timecards, and personnel records. However, Plaintiff did not
20 receive all of her requested records until June 6, 2023 and on July 10, 2023, violating California
21 Labor Code §§ 226 and 1198.5 by failing to timely produce the required records requested by
22 Plaintiff. The personnel files were received 23 and 57 days late.

23 127. On information and belief, Defendants' failure to provide Plaintiff with all of
24 her requested employment records is not an isolated incident, but was instead consistent with
25 Defendants' policy and practice that applied to Plaintiff and Employees.

26 128. Pursuant to California Labor Code § 1198.5, Plaintiff and Employees are
27 entitled to a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and
28 costs.

129. Pursuant to California Labor Code § 226(f), Plaintiff is entitled to a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and cost, and the other Class Members similarly situated are similarly entitled.

ELEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES LABOR CODE § 2802

(Against All Defendants)

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

131. Plaintiff is informed and believes and based thereon alleges that throughout the period applicable, Defendants required Plaintiff and the Class Members to pay for necessary work related expenses they incurred. Defendants required Plaintiff and the Class Members to use their personal cellular phones to communicate about work related business and failed to reimburse as addressed above. Plaintiff and the Class Members must be reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do so.

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

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

134. Therefore, Plaintiff and the Class Members are entitled to reimbursement for any and all necessary work related expenses, as provided for in Labor Code § 2802(b) and

1 paragraph 9 of the applicable IWC Wage Orders, incurred during the direct discharge of their
2 duties while employed by Defendants, as well as accrued interest on those expenses that were not
3 reimbursed from the date Plaintiff and the Class Members incurred those expenses. Further,
4 Plaintiff and the Class Members are entitled to costs and attorney's fees pursuant to Labor Code §
5 2802(c).

6 **TWELTH CAUSE OF ACTION**
7 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***
8 **(Against All Defendants)**

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

15 136. Plaintiff is a "person" within the meaning of Business & Professions Code
16 § 17204, has suffered injury, and therefore has standing to bring this cause of action for
17 injunctive relief, restitution, and other appropriate equitable relief.

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

27 138. Wage-and-hour laws express fundamental public policies. Paying employees
28 their wages and overtime, providing them with meal periods and rest breaks, etc., are

1 fundamental public policies of California. Labor Code § 90.5(a) articulates the public policies of
2 this State vigorously to enforce minimum labor standards, to ensure that employees are not
3 required or permitted to work under substandard and unlawful conditions, and to protect law-
4 abiding employers and their employees from competitors who lower costs to themselves by
5 failing to comply with minimum labor standards.

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

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

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

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

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

27 144. Unless restrained by this Court Defendants will continue to engage in such
28 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court

1 should make such orders or judgments, including the appointment of a receiver, as may be
2 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
3 deceptive practice prohibited by the Business & Professions Code, including but not limited to
4 the disgorgement of such profits as may be necessary to restore Employees to the money
5 Defendants have unlawfully failed to pay.

6 **THIRTEENTH CAUSE OF ACTION**
7 **PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.***
8 **(Against All Defendants)**

9 145. Plaintiff realleges and incorporate all preceding paragraphs, as though set forth
10 in full herein.

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

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

22 148. As such, Employees seek wages and penalties under Labor Code §§ 2698 and
23 2699 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5,
24 including the penalty provisions, without limitation, based, inter alia, on the following California
25 Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512, 558, 1174,
26 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 *et seq.*

27 149. More specifically, after complying with the notice procedures of Labor Code
28 § 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General

1 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above
2 addressed underlying claims and seeking penalties as specified by the applicable corresponding
3 provisions, including as follows:

4 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
5 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
6 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
7 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
8 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
9 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
10 to Labor Code § 2699(g)(1);

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

19 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
20 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
21 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
22 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
23 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
24 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
25 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
26 providing inaccurate wage statements and failing to maintain records as required under Labor
27 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
28 Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a

1 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
2 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
3 citation, ...”;

4 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
5 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
6 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
7 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
8 of the applicable IWC Wage Orders, and also for attorneys’ fees and costs pursuant to Labor Code
9 § 2699(g)(1);

10 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
11 Defendants’ unlawful deductions from wages and for Defendants’ failure to reimburse the
12 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
13 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
14 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
15 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys’ fees and costs
16 pursuant to Labor Code § 2699(g)(1);

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

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

25 (a) Any employer or other person acting on behalf of an employer who violates, or
26 causes to be violated, a section of this chapter or any provision regulating hours and days of work
27 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1)
28 For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

1 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
2 each pay period for which the employee was underpaid in addition to an amount sufficient to
recover underpaid wages...

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

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

8 151. Plaintiff has exhausted her administrative remedies by submitting a certified
9 letter to the LWDA and Defendants on October 30, 2023 (LWDA Case No. LWDA-CM-990689-
10 23) addressing in detail the specific provisions of the Labor Code Defendants have violated and
11 addressing the facts and legal theories to support the alleged violations and requested penalties.
12 The LWDA has not provided notice of its intent to investigate the alleged violations within 65
13 calendar days of the postmark date of the letter, and Plaintiff adds this claim seeking penalties
14 under the PAGA for the violations addressed herein and in the PAGA Notice letter and the original
15 Complaint.

16 **RELIEF REQUESTED**

17 WHEREFORE, Plaintiff prays for the following relief:

- 18 1. For an order certifying this action as a class action;
- 19 2. For compensatory damages in the amount of the unpaid minimum wages for work
20 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
21 the filing of this action, as may be proven;
- 22 3. For liquidated damages in the amount equal to the unpaid minimum wage and
23 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 24 4. For compensatory damages in the amount of all unpaid wages, including overtime
25 pay, as may be proven;
- 26 5. For compensatory damages in the amount of the hourly wage made by Employees
27 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
28 years prior to the filing of this action, as may be proven;

1 6. For compensatory damages in the amount of the hourly wage made by Employees
2 for each day requisite rest breaks were not provided or were deficiently provided where no
3 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
4 be proven;

5 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

6 8. For restitution and/or damages and penalties for Defendants' failure to pay all
7 wages due twice monthly under Labor Code § 204, as may be proven;

8 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
9 for all Class Members in violation of Labor Code § 221, as may be proven;

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

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

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

14 13. For damages and restitution for failure to reimburse all reasonable and necessary
15 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;

16 14. For restitution for unfair competition pursuant to Business & Professions Code
17 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

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

19 16. For penalties under Labor Code § 558, as may be proven;

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

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

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

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

26 ///

27 ///

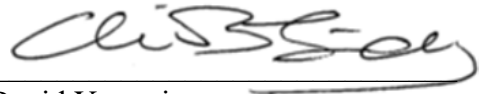
28 ///

- 1 21. For an award providing for the payment of the costs of this suit;
2 22. For an award of attorneys' fees; and
3 23. For such other and further relief as this Court may deem proper and just.

4
5 DATED: January 03, 2024

D. LAW, INC.

6
7 By


David Yeremian
Alvin B. Lindsay
Attorneys for Plaintiff ARLEN F.
ALCANTAR and all others
similarly situated

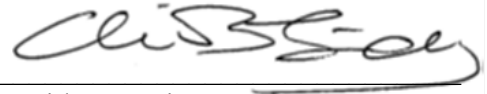
DEMAND FOR JURY TRIAL

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

DATED: January 3, 2024

D.LAW, INC.

By



David Yeremian
Alvin B. Lindsay
Attorneys for Plaintiff ARLEN F.
ALCANTAR and all others similarly
situated

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

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

Barbara A. Cotter
bcotter@cookbrown.com
Terry A. Wills
twills@cookbrown.com
COOK BROWN, LLP
2407 J Street, Second Floor
Sacramento, CA 95816

[X] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

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

California.


Sasha Zambrano

Sasha Zambrano