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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SAN JOAQUIN**

16 JANINE MIRELES, individually and on
behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 LODI MEMORIAL HOSPITAL
20 ASSOCIATION, INC.; ADVENTIST
HEALTH SYSTEM/WEST; and Does 1
21 through 25,

22 Defendants.

Case No. STK-CV-UOE-2020-0004458

**FIRST AMENDED CLASS ACTION [Cal.
Code Civ. Proc. § 382] AND
REPRESENTATIVE ACTION [Labor
Code §§ 2698, et seq.] COMPLAINT**

1. Failure to Pay Minimum Wages (Lab. Code §§ 1182.12, 1194, 1194.2, 1197, and 1198, and § 4 of the Applicable IWC Order);
2. Failure to Pay Overtime Wages (Lab. Code § 510, 1194, and 1198, and § 3 of the Applicable IWC Wage Order);
3. Failure to Provide Meal Periods (Lab. Code § 226.7 and 512, and § 11 of the Applicable IWC Wage Order);
4. Failure to Provide Rest Periods (Lab. Code § 226.7 and § 12 of the Applicable IWC Wage Order);

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5. Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226 and § 7 of the Applicable IWC Wage Order);
6. Failure to Reimburse Business Expenses (Lab. Code §§ 2800 and 2802, and § 9 of the Applicable IWC Wage Order);
7. Failure to Timely Pay Wages Due During Employment (Lab. Code § 204 and the Applicable IWC Wage Order);
8. Failure to Timely Pay Wages Due Upon Separation of Employment (Lab. Code §§ 201, 202, and 203, and the Applicable IWC Wage Order);
9. Violation of the Unfair Competition Law (Bus. & Prof. Code §§ 17200-17208); and
10. Civil Penalties Pursuant to the PAGA (Labor Code §§ 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff Janine Mireles ("Plaintiff"), on behalf of herself, the general public, and all
2 others similarly situated, and as a representative of the State of California and the California
3 Labor and Workforce Development Agency ("LWDA"), complains and alleges as follows:

4 I.

5 **INTRODUCTION**

6 1. Plaintiff brings this class action pursuant to California Code of Civil Procedure
7 section 382 and representative action pursuant to the Private Attorneys General Act of 2004
8 ("PAGA"), Labor Code sections 2698, *et seq.*, against Defendants Lodi Memorial Hospital
9 Association, Inc. ("Defendant Lodi"), Adventist Health System/West ("Defendant Adventist
10 Health"), and Does 1-25 (hereinafter collectively referred to as "Defendants"), as an
11 individual and on behalf of all other similarly situated and all other aggrieved current and
12 former employees of Defendants for: failure to pay all minimum and overtime wages for all
13 hours worked, failure to provide off-duty meal and rest periods, failure to provide accurate
14 itemized wage statements, failure to reimburse business expenses, failure to timely pay all
15 wages due during employment, failure to timely pay all wages due upon separation of
16 employment, and restitution for unfair business practices in violation of Business and
17 Professions Code sections 17200-17208.

18 2. This class and representative action is within the Court's jurisdiction under
19 California Labor Code sections 201-203, 204, 226, 226.3, 226.7, 510, 512, 1174, 1174.5,
20 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199(c), 2800, and 2802, the California Industrial
21 Welfare Commission's ("TWC") Wage Orders, and the California Unfair Competition Law
22 (the "UCL"), codified at California Business and Professions Code sections 17200-17208, and
23 under the PAGA.

24 3. This Complaint challenges systemic illegal employment practices resulting in
25 violations of the California Labor Code and Business and Professions Code against employees
26 of Defendants.

27 4. Plaintiff is informed and believes and based thereon alleges that Defendants
28 jointly and severally have acted intentionally and with deliberate indifference and conscious

1 disregard to the rights of all employees by failing to pay overtime and minimum wages for all
2 hours worked, failing to provide off-duty meal and rest breaks, failing to reimburse all
3 business expenses, failing to provide accurate itemized wage statements, and failing to pay all
4 wages due during and upon termination of employment.

5 5. Plaintiff is informed and believes and based thereon alleges that Defendants
6 have engaged in, among other things a system of willful violations of the California Labor
7 Code, Business and Professions Code, and applicable IWC Wage Orders by creating and
8 maintaining policies, practices, and customs that knowingly deny employees the above-stated
9 rights and benefits.

10 6. The policies, practices, and customs of Defendants described above and below
11 have resulted in unjust enrichment of Defendants and an unfair business advantage over
12 businesses that routinely adhere to the strictures of the California Labor Code and the
13 California Business and Professions Code.

14 7. Plaintiff has given notice of these claims to the LWDA seeking intervention.
15 As there has been no intervention within 65 days of Plaintiff's written notice to the LWDA,
16 Plaintiff asserts claims for civil penalties as a representative for and on behalf of the State of
17 California in a representative capacity, as provided by the PAGA to the extent permitted by
18 law, as an aggrieved employee who suffered one or more of the alleged violations during all
19 or a significant part of the applicable liability period, or proposed "PAGA Period" (which is
20 defined as any time from one year from the date of the filing for civil penalties under the
21 PAGA, excluding the 65 days as provided by Labor Code section 2699.3(d).)

22 8. Plaintiff's May 16, 2020 PAGA notice, and her June 24, 2020 Amended PAGA
23 notice, showing compliance with Labor Code section 2699.3 is hereby incorporated by
24 reference and demonstrates that Plaintiff is an aggrieved employee and has standing to bring
25 a representative action on behalf of the State of California and the LWDA as a private attorney
26 general. Since no notice of cure has been provided by Defendants, nor has the LWDA
27 indicated that it intends to investigate within the proscribed 65-day period from the date of
28 mailing of the notice, Plaintiff has asserted PAGA claims herein and brings this action as a

1 "Representative Action" as specifically permitted and authorized by Labor Code section
2 2699.3(a)(2)(C).

3 II.

4 **PARTIES, JURISDICTION, AND VENUE**

5 9. On or about September 24, 2018 until on or about March 26, 2020, Plaintiff
6 worked for Defendants as a non-exempt employee, most recently as a Medical Assistant.
7 Plaintiff was and is the victim of the policies, practices, and customs of Defendants
8 complained of in this action in ways that have deprived her of the rights guaranteed by
9 California Labor Code sections 201-203, 204, 226, 226.3, 226.7, 510, 512, 1174, 1174.5,
10 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199(c), 2800, and 2802, and the applicable IWC
11 Wage Order, and the UCL.

12 10. Venue as to each Defendant is proper in this judicial district, pursuant to Code
13 of Civil Procedure, section 395. Defendants conduct business in San Joaquin County,
14 California and each Defendant is within the jurisdiction of this Court for service of process
15 purposes. The unlawful acts alleged have a direct effect on Plaintiff and those similarly
16 situated within the State of California and San Joaquin County. Defendants employed Plaintiff
17 and employed and continue to employ numerous members of the Plaintiff Class in San Joaquin
18 County. There is no federal question at issue, as the issues are based solely on California
19 statutes and law, including the Labor Code, the applicable IWC Wage Order, Code of Civil
20 Procedure, Civil Code, and Business and Professions Code.

21 11. The Court has jurisdiction over Plaintiff's and other aggrieved employees'
22 claims for civil penalties under the PAGA, Labor Code sections 2698, *et seq.* Plaintiff's
23 representative PAGA penalty claims are not subject to federal jurisdiction.

24 12. Business and Professions Code section 17203 provides that any person who
25 engages in unfair competition may be enjoined in any court of competent jurisdiction.
26 Business and Professions Code section 17204 provides that any person, acting on his or her
27 own behalf, may bring an action in a court of competent jurisdiction.

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1 13. Plaintiff is informed and believes and based thereon alleges that Defendant
2 Lodi was and is a California corporation doing business in the State of California. Plaintiff is
3 informed and believes and based thereon alleges that Defendant Lodi maintains its
4 headquarters in Lodi, California.

5 14. Plaintiff is informed and believes and based thereon alleges that Defendant
6 Adventist Health was and is a California corporation doing business in the State of California.
7 Plaintiff is informed and believes and based thereon alleges that Defendant Adventist Health
8 maintains its headquarters in Roseville, California.

9 15. Plaintiff does not know the true names or capacities of the Defendants sued
10 herein as Does 1 through 25, inclusive, and, for that reason, said Defendants are sued under
11 such fictitious names. Plaintiff is informed and believes, and based thereon, alleges that each
12 of said fictitious Defendants are and were responsible in some manner for the injuries
13 complained of herein. Plaintiff will amend this Complaint to identify such fictitiously-named
14 Defendants pursuant to Code of Civil Procedure section 474 once their identities become
15 known.

16 16. The relief sought by Plaintiff on behalf of herself and the Plaintiff Class
17 defined below exceeds the minimal jurisdictional limits of the Superior Court and will be
18 established according to proof at trial. The Court has personal jurisdiction over each of the
19 parties because they are either citizens of this State, doing business in this State, or otherwise
20 have minimum contacts with this State.

21 17. Venue is proper in this Court because, upon information and belief, Plaintiff
22 worked for Defendants in this county, Defendant Lodi is headquartered in this county,
23 Defendants transact business in this county, and acts and omissions alleged herein took place
24 in this county.

25 18. Plaintiff is informed and believes and, based thereon, alleges that Defendants
26 were at all times relevant hereto members of, and engaged in, a joint venture, partnership,
27 association, or common enterprise, and acting within the course and scope of, and in pursuance
28 of, said joint venture, partnership, association, or common enterprise. Furthermore, Plaintiff

1 is informed and believes and, based thereon, alleges that at all times relevant hereto
2 Defendants conspired together in, aided and abetted, contributed to, and/or acted as agents or
3 employees of each other with respect to, the commission of the acts complained of herein.
4 Defendants are therefore jointly and severally liable for the injuries complained of herein.

5 **III.**

6 **GENERAL ALLEGATIONS**

7 19. California's Labor Code and the applicable IWC Wage Order requires
8 employers, among other things, to pay wages, including minimum and overtime wages for all
9 hours worked, provide compliant meal and rest periods, to furnish each employee with
10 accurate, itemized wage statements, and to reimburse employees for all expenses necessarily
11 incurred in the discharge of their employment.

12 20. During all, or portions of the Class Period, Defendants maintained a consistent
13 policy of failing to pay Plaintiff and members of the Plaintiff Class for all hours worked,
14 including minimum and overtime wages, by requiring Plaintiff and members of the Plaintiff
15 Class to work off-the-clock without receiving any compensation for these hours worked off-
16 the-clock. Defendants employed Plaintiff and members of the Plaintiff Class for more than 8
17 hours per day and more than 40 hours per workweek, or in excess of twelve (12) hours in a
18 day and/or in excess of eight (8) hours on the seventh day of work in a workweek, and failed
19 to pay Plaintiff and members of the Plaintiff Class overtime and double-time compensation
20 for the overtime and double time hours Plaintiff and members of the Plaintiff Class worked.
21 Defendants also failed to pay all overtime wages for all overtime hours worked because they
22 failed to properly calculate the regular rate of pay for purposes of calculating overtime and
23 double-time rates for Plaintiff and members of the Plaintiff Class. As a result, Defendants
24 failed to pay Plaintiff and members of the Plaintiff Class all their earned wages.

25 21. During all, or portions of the Class Period, Defendants failed to provide
26 Plaintiff and members of the Plaintiff Class timely, uninterrupted, off-duty meal periods of no
27 less than thirty minutes before their fifth hour of work and failed to compensate Plaintiff and
28 members of the Plaintiff Class for these missed meal periods. Defendants required Plaintiff

1 and, on information and belief, other members of the Plaintiff Class to sign purported meal
2 period waivers at the beginning of their employment. These waivers, however, are invalid
3 because Defendants did not sign said waivers, they were not signed voluntarily, and signing
4 was a condition of employment. See *Faulkinbury v. Boyd & Associates, Inc.*, 216 Cal. App.
5 4th 220, 234 (2013). Additionally, one of the meal period waivers provides that Plaintiff and
6 members of the Plaintiff Class waive their “right to [their] second meal period on days that
7 [they] work more than ten (10) hours and [are] entitled to a second meal period pursuant to
8 AH Policy.” This mandatory waiver did not ensure that Plaintiff and members of the Plaintiff
9 Class got their first meal period, further making the waiver invalid and in violation of the
10 Labor Code.

11 22. Defendants employed Plaintiff and members of the Plaintiff Class for work
12 periods of four hours or major fraction thereof without rest periods of ten minutes’ net rest
13 time and failed to compensate Plaintiff and members of the Plaintiff Class for these missed
14 rest periods. Defendants’ employment practices incentivized Plaintiff and members of the
15 Plaintiff Class to forego taking rest breaks because Plaintiff and members of the Plaintiff Class
16 were often not provided coverage in order to take a rest break, and thus were regularly denied
17 rest breaks.

18 23. During the Class Period, Defendants had a consistent policy of failing to
19 reimburse Plaintiff and members of the Plaintiff Class for all necessary and reasonable
20 business expenses incurred, in violation of California state wage and hour laws. Plaintiff and
21 Members of the Plaintiff Class were required to purchase their own scrubs to use while
22 working for Defendants, and also had to use their personal cellular devices for work-related
23 purposes, such as, but not limited to, communicating with other co-workers and researching
24 medications. Defendants failed to reimburse Plaintiff and members of the Plaintiff Class for
25 their work-related use of their scrubs and their personal cellular devices, incurred in the
26 discharge of their duties for Defendants.

27 24. Defendants have intentionally and willfully failed to provide Plaintiff and
28 members of the Plaintiff Class with complete and accurate wage statements. The deficiencies

1 include, among other things, the failure to list the gross wages earned, net wages earned, and
2 all hours worked.

3 25. During all, or portions, of the Class Period, Defendants had a consistent policy
4 of failing to pay Plaintiff and members of the Plaintiff Class all wages due during and upon
5 termination of employment, in violation of California state wage and hour laws.

6 26. On information and belief, Plaintiff alleges that Defendant applied the same
7 policies described above to all other members of the proposed Plaintiff Class. As alleged below,
8 these uniform policies, practices, and procedures violated California's labor laws and
9 constituted unfair, fraudulent, or illegal business practices under Business & Professions Code
10 sections 17200, *et seq.*

11 **IV.**

12 **CLASS ALLEGATIONS**

13 27. Plaintiff brings this action pursuant to California Code of Civil Procedure
14 section 382 on behalf of herself and Class Members defined below. The Plaintiff Class is
15 comprised of and defined as:

16 **Plaintiff Class**

17 All current and former non-exempt employees who worked for
18 Defendants in the State of California from April 6, 2016 to the date
of trial.¹

19 28. Plaintiff also seeks to certify the following Subclass:

20 **Waiting Time Subclass**

21 All members of the Plaintiff Class who separated their employment
from Defendants from April 6, 2017 to the date of trial.

22 29. Plaintiff also seeks to certify the following Subclass:

23 **Wage Statement Subclass:**

24 All members of the Plaintiff Class who, within one year of the filing
25 of this Action, received one or more itemized wage statement that
did not include all wages due and/or the accurate number of hours
worked from April 6, 2019 to the date of trial.

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28 ¹The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix
I, Emergency Rule No. 9.

1 30. Members of the Plaintiff Class and Subclasses described above will be
2 collectively referred to as "Class Members." Plaintiff reserves the right to establish other or
3 additional subclasses, or modify the Plaintiff Class or Subclass definitions, as appropriate
4 based on investigation, discovery and specific theories of liability.

5 31. There exists a well-defined community of interest among the Plaintiff Class,
6 and the Plaintiff Class is readily ascertainable.

7 32. The members of the Plaintiff Class are so numerous that joinder of all members
8 in a single action would not be feasible or practical, and the amount of individual damages is
9 not large enough to make individual lawsuits by each Class Member practical or feasible.
10 Plaintiff is informed and believes and based upon such information and belief alleges that
11 there are in excess of 50 members of the Plaintiff Class.

12 33. Plaintiff's claims are typical of the claims of the rest of the Plaintiff Class, and
13 Plaintiff and her counsel will fairly and adequately represent the interests of the Plaintiff Class.

14 34. Common issues of fact and/or law predominate in this action over any
15 allegedly individual issues. Specifically, the following common questions of fact or law
16 predominate and make this action superior to individual actions:

17 (i) whether Plaintiff and the rest of the Plaintiff Class are entitled to
18 recover damages, penalties, and other relief on the grounds that Defendants have used uniform
19 policies, practices, and procedures that have consistently violated California labor laws and
20 regulations and caused Plaintiff and the rest of the Plaintiff Class to suffer the same or similar
21 injuries;

22 (ii) whether Defendants violated Labor Code sections 1182.12, 1194,
23 1194.2, 1197, and 1198 and Section 4 of the applicable IWC Wage Order by failing to pay
24 minimum wage for all hours worked;

25 (iii) whether Defendants violated Labor Code sections 510, 1194, and 1198,
26 and Section 3 of the applicable IWC Wage Order by failing to pay overtime compensation;

27 (iv) whether Defendants violated Labor Code sections 226.7 and 512, and
28 Section 11 of the applicable IWC Wage Order by failing to provide meal periods for each five

1 hours worked, and not compensating employees with one hour of pay at the employees'
2 regular rate of compensation for each workday that a meal period was not provided;

3 (v) whether Defendants violated Labor Code section 226.7 and Section 12
4 of the applicable IWC Wage Order by failing to provide daily rest periods of ten minutes per
5 four hours or major fraction thereof worked and by failing to compensate employees one
6 hour's wages in lieu of rest periods;

7 (vi) whether Defendants violated Labor Code section 226 and Section 7 of
8 the applicable IWC Wage Order by failing to provide and maintain timely and accurate
9 itemized wage statements;

10 (vii) whether Defendants violated Labor Code sections 2800 and 2802, and
11 Section 9 of the applicable Wage Order by failing to indemnify Plaintiff and members of the
12 Plaintiff Class for all the necessary expenditures or losses incurred in direct consequence of
13 the discharge of their duties, or of their obedience to the directions of their employer;

14 (viii) whether Defendants violated Labor Code section 204 and Sections 3
15 and 4 of the applicable IWC Wage Order by failing to pay wages for all hours worked;

16 (ix) whether Defendants violated Labor Code sections 201-203 by failing
17 to timely pay Plaintiff and Waiting Time Subclass Members all wages due upon termination
18 or within seventy-two (72) hours of resignation; and

19 (x) whether Defendants' practices constitute unfair, fraudulent, or illegal
20 business practices under Business and Professions Code sections 17200, *et seq.*

21 35. California labor laws under which Plaintiff asserts the following causes of
22 action on behalf of herself and the rest of the Plaintiff Class are broadly remedial in nature.
23 These labor laws serve an important public interest in establishing minimum working
24 conditions and standards in California. They furthermore protect employees from exploitation
25 by employers who may seek to take advantage of their superior economic and bargaining
26 power in setting onerous terms and conditions of employment. The class action mechanism is
27 a particularly efficient and appropriate procedure to redress the injuries alleged herein. If each
28 employee in the Plaintiff Class was required to file an individual action, Defendants would be

1 able to use their superior financial and legal resources to gain an unfair advantage over each
2 individual Class Member. Moreover, requiring each Class Member to pursue an individual
3 action would also discourage the assertion of meritorious causes of action by employees who
4 would likely be disinclined to file such individual actions due to a justifiable fear of retaliation
5 and damage to their careers at subsequent employment.

6 36. In addition, even if feasible, individual actions by each Class Member would
7 create a substantial risk (i) of inconsistent or varying adjudications with respect to the claims
8 of each class member against Defendants, that in turn could establish potentially incompatible
9 standards of conduct for Defendants, and/or (ii) of adjudications with respect to individual
10 Plaintiff and members of the Plaintiff Class that would, as a practical matter, be dispositive of
11 the interests of the other Plaintiff and members of the Plaintiff Class . Furthermore, the claims
12 of each individual Class Member are not sufficiently large enough to make it economically
13 feasible to bring each Class Member's claims on an individual basis.

14 **V.**

15 **CAUSES OF ACTION**

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY MINIMUM WAGES**

18 **(Violation of Cal. Labor Code §§ 1182.12, 1194, 1194.2, 1197,
19 and 1198, and § 4 of the Applicable IWC Wage Order)**

20 37. Plaintiff re-alleges and incorporates herein by this reference each and every
21 allegation set forth in all previous paragraphs of the Complaint.

22 38. Labor Code section 1194(a) states: "Notwithstanding any agreement to work
23 for a lesser wage, any employee receiving less than the legal minimum wage or the legal
24 overtime compensation applicable to the employee is entitled to recover in a civil action the
25 unpaid balance of the full amount of this minimum wage or overtime compensation, including
26 interest thereon, reasonable attorney's fees, and costs of suit."

27 39. Labor Code section 1194.2 states: "In any action under Section 98, 1193.6,
28 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum
wage fixed by an order of the commission or by statute, an employee shall be entitled to

1 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
2 thereon.”

3 40. Labor Code section 1194.2 provides for liquidated damages equal to
4 unlawfully unpaid minimum wages, with interest.

5 41. Labor Code section 1197 states: “The minimum wage for employees fixed by
6 the commission is the minimum wage to be paid to employees, and the payment of a less wage
7 than minimum wage so fixed is unlawful.”

8 42. Labor Code section 1198 states: “The maximum hours of work and the
9 standard conditions of labor fixed by the commission shall be the maximum hours of work
10 and the standard conditions of labor for employees. The employment of any employee for
11 longer hours than those fixed by the order or under conditions of labor prohibited by the order
12 is unlawful.”

13 43. Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of
14 the applicable Wage Order, an employer may not pay employees less than the applicable
15 minimum wage for all hours worked, and an employer may not pay non-exempt employees
16 less than the applicable overtime rate for all overtime hours worked.

17 44. During the relevant time period, Defendants regularly failed to pay at least
18 minimum wage to Plaintiff and members of the Plaintiff Class for all hours worked pursuant
19 to Labor Code sections 1194 and 1197.

20 45. Defendants’ failure to pay Plaintiff and members of the Plaintiff Class the
21 minimum wage as required violates Labor Code sections 1194 and 1197.

22 46. As a direct result, Plaintiff and members of the Plaintiff Class have suffered,
23 and continue to suffer, substantial losses related to the use and enjoyment of such wages,
24 including lost interest on such monies and expenses and attorney’s fees in seeking to compel
25 Defendants to fully perform their obligations under state law, all to their respective damage
26 in amounts according to proof at trial and within the jurisdictional limitations of this Court.

27 47. Defendants’ unlawful acts deprived Plaintiff and members of the Plaintiff
28 Class Plaintiff seeks to represent of minimum wages in amounts to be determined at trial, and

1 they are entitled to recover these amounts, along with liquidated damages for unpaid regular
2 or minimum wages, interest, attorneys' fees, and costs.

3 48. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount
4 of the unpaid wages resulting from Defendants' minimum wage violations including interest
5 thereon, reasonable attorney's fees and costs of suit, penalties, and liquidated damages to the
6 fullest extent permissible including those permitted pursuant to Labor Code sections 218.6,
7 1194, and 1194.2, and Code of Civil Procedure section 1021.5. Plaintiff, on behalf of herself
8 and the members of the Plaintiff Class, requests relief as described below.

9
10 **SECOND CAUSE OF ACTION**
11 **FAILURE TO PAY OVERTIME COMPENSATION**
12 **(Violation of Cal. Labor Code §§ 510, 1194, and 1198,**
13 **and § 3 of the Applicable IWC Wage Order)**

14 49. Plaintiff re-alleges and incorporates herein by this reference each and every
15 allegation set forth in all previous paragraphs of the Complaint.

16 50. Labor Code section 1198 and the applicable IWC Wage Order provide that it
17 is unlawful to employ persons without compensating them at a rate of pay either one and one-
18 half (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
19 or days worked by the person on a daily or weekly basis.

20 51. Specifically, Section 3 of the applicable IWC Wage Order provides that
21 Defendants are and were required to pay overtime compensation to Plaintiff and members of
22 the Plaintiff Class at the rate of one and one-half times (1½) their regular rate of pay when
23 working and for all hours worked in excess of eight (8) hours in a day or more than forty (40)
24 hours in a workweek and for the first eight (8) hours of work on the seventh day of work in a
25 workweek.

26 52. Section 4 of the applicable IWC Wage Order further provide that Defendants
27 are and were required to pay overtime compensation to Plaintiff and members of the Plaintiff
28 Class at a rate of two times their regular rate of pay when working and for all hours worked
in excess of twelve (12) hours in a day or in excess of eight (8) hours on the seventh day of
work in a workweek.

1 53. Labor Code section 510 codifies the right to overtime compensation at one and
2 one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a
3 day or forty (40) hours in a workweek and for the first eight (8) hours worked on the seventh
4 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
5 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
6 seventh day of work in a workweek.

7 54. Labor Code section 510 and the applicable IWC Wage Order provide that
8 employment of more than six days in a workweek is only permissible if the employer pays
9 proper overtime compensation as set forth herein.

10 55. During the relevant time period, Defendants failed to pay Plaintiff and
11 members of the Plaintiff Class overtime wages for all overtime hours worked when Plaintiff
12 and members of the Plaintiff Class worked in excess of eight (8) hours in a day, forty (40)
13 hours in a workweek and/or for a seventh consecutive day of work in a workweek, or when
14 Plaintiff and members of the Plaintiff Class worked in excess of twelve (12) hours in a day
15 and/or in excess of eight (8) hours on the seventh day of work in a workweek.

16 56. In violation of state law, Defendants knowingly and willfully refused to
17 perform their obligations and compensate Plaintiff and members of the Plaintiff Class all
18 wages earned for all hours worked.

19 57. Defendants' failure to pay Plaintiff and members of the Plaintiff Class the
20 unpaid balance of overtime and double-time compensation, as required by California law,
21 violates the provisions of Labor Code sections 510 and 1198, and is therefore unlawful.

22 58. As a direct result, Plaintiff and members of the Plaintiff Class have suffered,
23 and continue to suffer, substantial losses related to the use and enjoyment of such wages,
24 including lost interest on such monies and expenses and attorney's fees in seeking to compel
25 Defendants to fully perform their obligations under state law, all to their respective damage
26 in amounts according to proof at trial and within the jurisdictional limitations of this Court.

27 59. Defendants' unlawful acts deprived Plaintiff and members of the Plaintiff
28 Class Plaintiff seeks to represent of minimum and/or overtime wages in amounts to be

1 determined at trial, and they are entitled to recover these amounts, along with liquidated
2 damages for unpaid regular or minimum wages, interest, attorneys' fees, and costs.

3 60. Pursuant to Labor Code section 1194, Plaintiff and members of the Plaintiff
4 Class are entitled to recover their unpaid overtime and double-time compensation as well as
5 interest, costs, and attorneys' fees.

6 **THIRD CAUSE OF ACTION**
7 **FAILURE TO PROVIDE MEAL PERIODS**
8 **(Violation of Cal. Labor Code §§ 226.7 and 512, and § 11 of the**
9 **Applicable IWC Wage Order)**

10 61. Plaintiff re-alleges and incorporates herein by this reference each and every
11 allegation set forth in all previous paragraphs of the Complaint.

12 62. Labor Code section 226.7 provides that no employer shall require an employee
13 to work during any meal period mandated by the IWC Wage Orders.

14 63. Section 11 of the applicable IWC Wage Order states that "[n]o employer shall
15 employ any person for a work period of more than five (5) hours without a meal period of not
16 less than 30 minutes, except that when a work period of not more than six (6) hours will
17 complete the day's work the meal period may be waived by mutual consent of the employer
18 and the employee."

19 64. Labor Code section 512(a) provides that an employer may not require, cause,
20 or permit an employee to work for a period of more than five (5) hours per day without
21 providing the employee with an uninterrupted meal period of not less than thirty (30) minutes,
22 except that if the total work period per day of the employee is not more than six (6) hours, the
23 meal period may be waived by mutual consent of both the employer and the employee.

24 65. Labor Code section 512(a) also provides that an employer may not employ an
25 employee for a work period of more than ten (10) hours per day without providing the
26 employee with a second meal period of not less than thirty (30) minutes, except that if the
27 total hours worked is no more than twelve (12) hours, the second meal period may be waived
28 by mutual consent of the employer and the employee only if the first meal period was not
waived.

1 66. During the relevant time period, Plaintiff and members of the Plaintiff Class
2 did not receive compliant meal periods for working more than five (5) and/or ten (10) hours
3 per day.

4 67. Labor Code section 226.7(b) and Section 11 of the applicable IWC Wage
5 Order require an employer to pay an employee one (1) additional hour of pay at the
6 employee's regular rate of compensation for each workday that a compliant meal period is not
7 provided.

8 68. At all relevant times, Defendants failed to pay Plaintiff and members of the
9 Plaintiff Class meal period premiums for their missed meal periods pursuant to Labor Code
10 section 226.7(b) and Section 11 of the applicable IWC Wage Order.

11 69. As a result of Defendants' failure to pay Plaintiff and members of the Plaintiff
12 Class an additional hour of pay for each day a compliant meal period was not provided,
13 Plaintiff and members of the Plaintiff Class suffered and continue to suffer a loss of wages
14 and compensation. Because Defendants failed to provide meal periods, they are liable to
15 Plaintiff and members of the Plaintiff Class for one hour of additional premium pay at the
16 regular rate of compensation for each workday that the meal periods were not provided,
17 pursuant to Labor Code section 226.7 and Section 11(B) of the applicable IWC Wage Order.

18 70. As a direct result of Defendants' violations alleged herein, Plaintiff and
19 members of the Plaintiff Class have suffered, and continue to suffer, substantial losses related
20 to the use and enjoyment of such wages, including lost interest on such monies and expenses
21 and attorney's fees in seeking to compel Defendants to fully perform their obligations under
22 state law, all to their respective damage in amounts according to proof at trial and within the
23 jurisdictional limitations of this Court.

24 71. Defendants' unlawful acts deprived Plaintiff and members of the Plaintiff
25 Class Plaintiff seeks to represent of premium wages and/or other compensation in amounts to
26 be determined at trial, and they are entitled to recover such amounts, plus interest, attorneys'
27 fees, and costs.

28 ///

72. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the unpaid wages resulting from Defendants' meal period violations including interest thereon, reasonable attorney's fees and costs of suit, and penalties to the fullest extent permissible including those permitted pursuant to Labor Code sections 226.7 and 512, and Code of Civil Procedure section 1021.5.

73. Plaintiff, on behalf of herself and members of the Plaintiff Class, requests relief as described below.

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
(Violation of Cal. Labor Code § 226.7 and § 12 of the Applicable IWC Wage Order)

74. Plaintiff re-alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of the Complaint.

75. Labor Code section 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by the IWC Wage Orders.

76. Section 12 of the applicable IWC Wage Order states “every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and the “authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

77. Section 12(B) of the applicable IWC Wage Order states that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

78. Labor Code section 226.7(d) provides that a rest period mandated by state law or IWC Wage Order “shall be counted as hours worked, for which there shall be no deduction from wages.”

79. During the relevant time period, Plaintiff and members of the Plaintiff Class did not receive a ten (10)-minute net rest period for every four (4) hours or major fraction

1 thereof worked.

2 80. Labor Code section 226.7(b) and Section 12 of the applicable IWC Wage
3 Order require an employer to pay an employee one additional hour of pay at the employee's
4 regular rate of compensation for each workday that the rest period is not provided.

5 81. At all relevant times, Defendants failed to pay Plaintiff and members of the
6 Plaintiff Class the full rest period premium for missed or interrupted rest periods pursuant to
7 Labor Code section 226.7(b) and Section 12 of the applicable IWC Wage Order.

8 82. As a direct result of Defendants' violations alleged herein, Plaintiff and
9 members of the Plaintiff Class have suffered, and continue to suffer, substantial losses related
10 to the use and enjoyment of such wages, including lost interest on such monies and expenses
11 and attorney's fees in seeking to compel Defendants to fully perform their obligations under
12 state law, all to their respective damage in amounts according to proof at trial and within the
13 jurisdictional limitations of this Court.

14 83. Defendants' unlawful acts deprived Plaintiff and members of the Plaintiff
15 Class Plaintiff seeks to represent of premium wages and/or other compensation in amounts to
16 be determined at trial, and they are entitled to recover such amounts, plus interest, attorneys'
17 fees, and costs.

18 84. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount
19 of the unpaid wages resulting from Defendants' rest period violations including interest
20 thereon, reasonable attorney's fees and costs of suit, and penalties to the fullest extent
21 permissible including those permitted pursuant to Labor Code section 226.7 and Code of Civil
22 Procedure section 1021.5.

23 85. Plaintiff, on behalf of herself and members of the Plaintiff Class requests relief
24 as described below.

25 **FIFTH CAUSE OF ACTION**
26 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
27 **(Violation of Cal. Labor Code § 226 and § 7 of the Applicable IWC Wage Order)**

28 86. Plaintiff re-alleges and incorporates herein by this reference each and every
allegation set forth in all previous paragraphs of the Complaint.

1 87. Labor Code section 226(a) states in pertinent part: "Every employer shall,
2 semimonthly or at the time of each payment of wages, furnish each of his or her employees,
3 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
4 separately when wages are paid by personal check or cash, an accurate itemized statement in
5 writing showing": (1) gross wages earned; (2) total hours worked by the employee, except for
6 any employee whose compensation is solely based on a salary and who is exempt from
7 payment of overtime under subdivision (a) of Section 515 or any applicable order of the
8 Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable
9 piece-rate if the employee is paid on a piece-rate basis; (4) All deductions, provided that all
10 deductions made on written orders of the employee may be aggregated and shown as one item;
11 (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7)
12 the name of the employee and only the last four digits of his or her social security number or
13 an employee identification number other than a social security number; (8) the name and
14 address of the legal entity that is the employer; and (9) all applicable hourly rates in effect
15 during the pay period and the corresponding number of hours worked at each hourly rate by
16 the employee. "The deductions made from payment of wages shall be recorded in ink or other
17 indelible form, properly dated, showing the month, day, and year, and a copy of the statement
18 and the record of the deductions shall be kept on file by the employer for at least three years
19 at the place of employment or at a central location within the State of California."

20 88. Section 7(A) of the applicable IWC Wage Order states in relevant part that the
21 employer shall keep accurate information regarding, "(4) Total wages paid each payroll
22 period, including value of board, lodging, or other compensation actually furnished to the
23 employee; (5) Total hours worked in the payroll period and applicable rates of pay."

24 89. Defendants have intentionally and willfully failed to provide Plaintiff and
25 members of the Wage Statement Subclass with complete and accurate wage statements. The
26 deficiencies include, among other things, the failure to list the gross wages earned, net wages
27 earned, and all hours worked.

28 ///

1 90. As a result of Defendants' violation of California Labor Code section 226(a),
2 Plaintiff and members of the Wage Statement Subclass have suffered injury and damage to
3 their statutorily protected rights. Specifically, Plaintiff and members of the Wage Statement
4 Subclass have been injured by Defendants' intentional violation of California Labor Code
5 section 226(a) because they were denied both their legal right to receive, and their protected
6 interest in receiving, accurate itemized wage statements under California Labor Code section
7 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage
8 statements, Defendants have prevented Plaintiff and members of the Wage Statement Subclass
9 from determining if all hours worked were paid at the appropriate rate and, if they were not,
10 the extent of the underpayment. Plaintiff has had to file this lawsuit in order to analyze whether
11 in fact Plaintiff was paid correctly and the extent of the underpayment, thereby causing
12 Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage in these efforts
13 and incur these costs had Defendants provided the accurate rate of pay. This has also delayed
14 Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

15 91. Labor Code section 226(e) states: "An employee suffering injury as a result of
16 a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
17 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in
18 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
19 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000),
20 and is entitled to an award of costs and reasonable attorneys' fees."

21 92. Labor Code section 226(e)(2)(B) states: "An employee is deemed to suffer
22 injury for purposes of this subdivision if the employer fails to provide accurate and complete
23 information as required by any one or more of items (1) to (9), inclusive, of subdivision (a)
24 and the employee cannot promptly and easily determine from the wage statement alone one
25 or more of the following: (i) The amount of gross wages or net wages paid to the employee
26 during the pay period or any other information required to be provided on the itemized wage
27 statement pursuant to items (2) to (4), inclusive, (6) and (9) of subdivision (a)...." Because
28 Plaintiff's wage statements did not include, among other things, an accurate accounting of

1 gross wages earned or the accurate total hours worked, she is deemed to have suffered injury.

2 93. Defendants' violations of California Labor Code section 226(a) prevented
3 Plaintiff and members of the Wage Statement Subclass from knowing, understanding, and
4 disputing the wages paid to them, and resulted in an unjustified economic enrichment to
5 Defendants. As a result of Defendants' knowing and intentional failure to comply with
6 California Labor Code section 226(a), Plaintiff and members of the Wage Statement Subclass
7 have suffered an injury, the exact amount of damages and/or penalties is all in an amount to
8 be shown according to proof at trial.

9 94. Labor Code section 226(h) states: "An employee may also bring an action for
10 injunctive relief to ensure compliance with this section, and is entitled to an award of costs
11 and reasonable attorney's fees."

12 95. As a direct result of Defendants' violations alleged herein, Plaintiff and
13 members of the Wage Statement Subclass have suffered, and continue to suffer, injury
14 including substantial losses related to the use and enjoyment of such wages, lost interest on
15 such monies and expenses and attorney's fees in seeking to compel Defendants to fully
16 perform their obligations under state law, all to their respective damage in amounts according
17 to proof at trial and within the jurisdictional limitations of this Court.

18 96. Plaintiff seeks to recover in a civil action all remedies including damages,
19 unpaid wages, penalties, attorney's fees and costs, and injunctive relief to the fullest extent
20 permissible including those permitted pursuant to Labor Code sections 226(e) and (h), and
21 Code of Civil Procedure section 1021.5.

22 97. Plaintiff, on behalf of herself and the members of the Wage Statement
23 Subclass, requests relief as described below.

24 **SIXTH CAUSE OF ACTION**
25 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
26 **(Violation of Labor Code §§ 2800 and 2802, and § 9 of the Applicable IWC Wage**
Order)

27 98. Plaintiff re-alleges and incorporates by this reference each and every allegation
28 set forth in all previous paragraphs of the Complaint.

1 99. Labor Code section 2800 provides, in pertinent part that “[a]n employer shall
2 in all cases indemnify his employee for losses caused by the employer’s want of ordinary
3 care.”

4 100. Labor Code section 2802 provides, in pertinent part, that “[a]n employer shall
5 indemnify his or her employee for all necessary expenditures or losses incurred by the
6 employee in direct consequence of the discharge of his or her duties... .”

7 101. Further, Labor Code section 2802 additionally provides, in pertinent part:
8 “(c)...the term ‘necessary expenditures or losses shall include all reasonable costs, including
9 but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by
10 this section.”

11 102. Section 9 of the applicable IWC Wage Order provides: “When tools or
12 equipment are required by the employer or are necessary to the performance of a job, such
13 tools and equipment shall be provided and maintained by the employer... .”

14 103. California Labor Code section 2804 mandates that this statutory right cannot
15 be waived.

16 104. During the relevant time period, Defendants were required to indemnify and
17 reimburse Plaintiff and members of the Plaintiff Class for all expenditures or losses caused by
18 the employer’s want of ordinary care and/or incurred in direct consequence of the discharge
19 of their duties, but failed to indemnify and reimburse Plaintiff and members of the Plaintiff
20 Class.

21 105. As a direct and proximate result, Plaintiff and members of the Plaintiff Class
22 have suffered, and continue to suffer, substantial losses related to the use and enjoyment of
23 such monies to be reimbursed, lost interest on such monies, and expenses and attorney’s fees
24 in seeking to compel Defendants to fully perform their obligations under California law, all
25 to their damage in amounts according to proof at the time of trial.

26 106. Accordingly, Plaintiff and members of the Plaintiff Class are entitled to
27 recover, and hereby seek, an amount equal to incurred necessary expenditures, pre- and post-
28 judgment interest, applicable penalties, attorneys’ fees and costs, and any further equitable

1 relief this Court may deem just and proper. *See* Cal. Lab. Code § 2802; *see also*, Cal. Civ.
2 Proc. Code § 1021.5.

3 107. Plaintiff, on behalf of herself and members of the Plaintiff Class, requests relief
4 as described below.

5 **SEVENTH CAUSE OF ACTION**
6 **FAILURE TO TIMELY PAY WAGES DUE DURING EMPLOYMENT**
7 **(Violation of Cal. Labor Code § 204 and the Applicable IWC Wage Order)**

8 108. Plaintiff re-alleges and incorporates herein by this reference each and every
9 allegation set forth in all previous paragraphs of the Complaint.

10 109. Labor Code section 204 provides that all wages earned by an employee are due
11 and payable twice during each calendar month.

12 110. Defendants failed to timely pay Plaintiff and members of the Plaintiff Class all
13 of their earned wages as required by Labor Code section 204.

14 111. Plaintiff and members of the Plaintiff Class have been deprived of their
15 rightfully earned wages as a direct and proximate result of Defendants' failure to pay said
16 compensation. Plaintiff and members of the Plaintiff Class are entitled to recover such
17 amounts, plus interest thereon, attorney's fees and costs.

18 **EIGHTH CAUSE OF ACTION**
19 **FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF**
20 **EMPLOYMENT**

21 **(Violation of Labor Code §§ 201, 202, and 203, and the Applicable IWC Wage Order)**

22 112. Plaintiff re-alleges and incorporates by this reference each and every allegation
23 set forth in all previous paragraphs of the Complaint.

24 113. California Labor Code sections 201 and 202 provide that if an employer
25 discharges an employee, the wages earned and unpaid at the time of discharge are due and
26 payable immediately, and that if an employee voluntarily leaves his employment, his or her
27 wages shall become due and payable not later than seventy-two (72) hours thereafter, unless
28 the employee has given seventy-two (72) hours previous notice of his or her intention to quit,
in which case the employee is entitled to his or her wages at the time of quitting.

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1 114. During the relevant time period, Defendants willfully failed to pay Plaintiff
2 and Waiting Time Subclass Members all their earned wages upon termination including, but
3 not limited to, proper minimum wages and overtime and double-time compensation, either at
4 the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

5 115. Defendants' failure to pay Plaintiff and Waiting Time Subclass Members all
6 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving
7 Defendants' employ is in violation of Labor Code sections 201 and 202.

8 116. California Labor Code section 203 provides that if an employer willfully fails
9 to pay wages owed immediately upon discharge or resignation in accordance with Labor Code
10 sections 201 and 202, then the wages of the employee shall continue as a penalty from the due
11 date at the same rate until paid or until an action is commenced; but the wages shall not
12 continue for more than thirty (30) days.

13 117. Plaintiff and Waiting Time Subclass Members are entitled to recover from
14 Defendants the statutory penalty which is defined as Plaintiff's and Waiting Time Subclass
15 Members' regular daily wages for each day they were not paid, at their regular hourly rate of
16 pay, up to a thirty (30)-day maximum pursuant to Labor Code section 203.

17 **NINTH CAUSE OF ACTION**
18 **VIOLATION OF THE UNFAIR COMPETITION LAW**
19 **(Business and Professions Code §§ 17200-17208)**

20 118. Plaintiff re-alleges and incorporates herein by this reference each and every
21 allegation set forth in all previous paragraphs of the Complaint.

22 119. California Business and Professions Code sections 17200, *et seq.* prohibit acts
23 of unfair competition, which includes any "unlawful, unfair or fraudulent business act or
24 practice"

25 120. A violation of California Business and Professions Code sections 17200, *et*
26 *seq.* may be predicated on the violation of any state or federal law. In the instant case,
27 Defendants' policies and practices have violated state law causing Plaintiff and Plaintiff Class
28 Members to suffer and continue to suffer injuries in fact. As alleged herein, Defendants
systematically engaged in unlawful conduct in violation of the California Labor Code and

1 IWC Wage Orders, such as by failing to timely pay all earned wages, including minimum
2 wages and overtime wages, failing to authorize or permit paid rest breaks, failing to provide
3 meal periods, failing to furnish accurate itemized wage statements, failing to reimburse
4 business expenses, and failing to timely pay wages due during and upon separation of
5 employment, all in order to decrease their costs of doing business and increase their profits.

6 121. This cause of action is brought under Business and Professions Code sections
7 17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action
8 and pursuant to Business and Professions Code section 17208, Plaintiff and all Plaintiff Class
9 Members seek restitution of wages owed and, where applicable, penalties under Labor Code
10 section 203, where such wages were due to each of the Class Members during the Class
11 Period, commencing four (4) years prior to filing of this complaint, according to proof.

12 122. This cause of action is brought as a cumulative remedy as provided in Business
13 and Professions Code section 17205, and is intended as an alternative remedy for restitution
14 for Plaintiff and each Class Member, for the time period, or any portion thereof, commencing
15 within four (4) years prior to the filing of this complaint, and as the primary remedy for
16 Plaintiff and each Class Member for the time period of the fourth year prior to the filing of
17 this complaint, as such one-year time period exceeds the statute of limitations on statutory
18 wage claims.

19 123. At all times relevant herein, Defendants intentionally avoided paying Plaintiff
20 and members of the Plaintiff Class wages and monies, thereby creating for Defendants an
21 artificially lower cost of doing business in order to undercut their competitors and establish
22 and/or gain a greater foothold in the marketplace.

23 124. At the time Plaintiff and members of the Plaintiff Class were hired, Defendants
24 knowingly, intentionally and wrongfully misrepresented to each of them their conformance
25 with the California Labor Code and IWC Wage Orders including misrepresenting that
26 Defendants would make proper payments to employees as required by law.

27 125. At all relevant times herein, Defendants held themselves out to Plaintiff and
28 members of the Plaintiff Class as being knowledgeable concerning the labor laws of

1 California.

2 126. At all times relevant herein, Plaintiff and members of the Plaintiff Class relied
3 on and believed Defendants' representations concerning their conformance with California's
4 wage and hour laws, all to their detriment.

5 127. As a result of Defendants' intentional, willful, purposeful and wrongful
6 misrepresentation of their conformance with the California Labor Code and IWC Wage
7 Orders, Plaintiff and members of the Plaintiff Class suffered a loss of wages and monies, all
8 in an amount to be shown according to proof at trial. By violating the foregoing statutes and
9 regulations as herein alleged, Defendants' acts constitute unfair and unlawful business
10 practices under California Business and Professions Code sections 17200, *et seq.*

11 128. Defendants' violations of the California Labor Code and IWC Wage Orders
12 and their scheme to lower their payroll costs as alleged herein, constitute unlawful business
13 practices because they were done in a systematic manner over a period of time to the detriment
14 of the Plaintiff and members of the Plaintiff Class.

15 129. As a result of the unfair business practices of Defendants, as alleged herein,
16 Plaintiff and members of the Plaintiff Class are entitled to injunctive relief, disgorgement, and
17 restitution in an amount to be shown according to proof at trial.

18 130. Plaintiff and members of the Plaintiff Class seek to enforce important rights
19 affecting the public interest within the meaning of California Code of Civil Procedure section
20 1021.5. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
21 unlawful, and harmful to members of the Plaintiff Class and to the general public. Based on
22 Defendants' conduct as alleged herein, Plaintiff and members of the Plaintiff Class are entitled
23 to an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5.

24 **TENTH CAUSE OF ACTION**
25 **CIVIL PENALTIES PURSUANT TO THE PAGA**
26 **(Labor Code §§ 2698, *et seq.*)**

27 131. Plaintiff re-alleges and incorporates herein by this reference each and every
28 allegation set forth in all previous paragraphs of the Complaint, including Plaintiff's Notice
to the LWDA dated May 16, 2020, and her June 24, 2020 Amended Notice.

1 132. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that
2 provides for a civil penalty to be assessed and collected by the Labor and Workforce
3 Development Agency ("LWDA") or any of its departments, divisions, commissions, boards,
4 agencies or employees for violation of the code may, as an alternative, be recovered through
5 a civil action brought by an aggrieved employee on behalf of himself or herself and other
6 current or former employees pursuant to the procedures specified in Labor Code section
7 2699.3.

8 133. For all provisions of the Labor Code except those for which a civil penalty is
9 specifically provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one
10 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
11 and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
12 subsequent pay period in which Defendants violated these provisions of the Labor Code.

13 134. Defendants' conduct violates numerous Labor Code sections including, but not
14 limited to, the following:

15 (a) Violation of Labor Code sections 201, 202, 203, 204, 510, 1194, 1197, 1197.1,
16 1198, and 1199(c) for failure to timely pay all earned wages (including minimum wages and
17 overtime wages) owed to Plaintiff and other aggrieved employees during employment and
18 upon separation of employment as herein alleged;

19 (b) Violation of Labor Code sections 226.7 and 512 for failure to provide meal
20 periods to Plaintiff and other aggrieved employees and failure to pay premium wages for
21 missed meal periods as herein alleged;

22 (c) Violation of Labor Code section 226.7 for failure to permit rest breaks to
23 Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest
24 periods as herein alleged;

25 (d) Violation of Labor Code section 226 for failure to provide accurate itemized
26 wage statements to Plaintiff and other aggrieved employees as herein alleged;

27 (e) Violation of Labor Code sections 1174 and 1174.5 for failure to maintain
28 accurate records; and

1 (f) Violation of Labor Code section 2802 for failure to reimburse all reasonable
2 and necessary business expenses.

3 135. Further, Labor Code section 558(a) provides “any employer or other person
4 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter
5 or any provisions regulating hours and days of work in any order of the IWC shall be subject
6 to a civil penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid
7 employee for each pay period for which the employee was underpaid in addition to an amount
8 sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars
9 (\$100) for each underpaid employee for each pay period for which the employee was
10 underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages
11 recovered pursuant to this section shall be paid to the affected employee.” Plaintiff seeks only
12 to recover the civil penalty provided for in Section 558(a) for the violations alleged herein
13 and *does not* seek to recover unpaid wages. Labor Code section 558(c) provides “the civil
14 penalties provided for in this section are in addition to any other civil or criminal penalty
15 provided by law.”

16 136. As set forth above, Defendants have violated numerous provisions of the Labor
17 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly,
18 Plaintiff seeks the remedies set forth in Labor Code section 558 for herself, the underpaid
19 employees, and the State of California.

20 137. Plaintiff is an “aggrieved employee” because she was employed by the alleged
21 violator and had one or more of the alleged violations committed against her, and therefore is
22 properly suited to represent the interests of all other aggrieved employees.

23 138. Plaintiff has exhausted the procedural requirements under Labor Code section
24 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of
25 herself and all other aggrieved employees under the PAGA.

26 139. PAGA imposes a penalty of one hundred dollars (\$100.00) for each aggrieved
27 employee per pay period for the initial violation and two hundred dollars (\$200.00) for each
28 aggrieved employee per pay period for each subsequent violation.

1 140. Labor Code section 226.3 provides for civil penalties for violations of Section
2 226. The civil penalty is \$250 for the initial violation and \$1,000 for each subsequent
3 violation.

4 141. Pursuant to Labor Code sections 2699(a), 2699.3, and 2699.5, Plaintiff and
5 members of the Plaintiff Class are entitled to recover civil penalties, in addition to other
6 remedies, for violations of the Labor Code sections cited above.

7 142. Plaintiff, as a representative of the general public, seeks to recover all Labor
8 Code section 2699(f)(2) civil penalties for each Labor Code violation alleged herein,
9 according to proof, as to those penalties otherwise only available in public agency
10 enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with
11 75% of penalties recovered provided to the LWDA on behalf of the State of California.

12 143. For bringing this action, Plaintiff is entitled to attorney's fees and costs
13 incurred as alleged herein.

14 **VI.**

15 **PRAYER**

16 Plaintiff prays for judgment as follows:

17 1. That the Court determine this action may be maintained as a class action and
18 Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;

19 2. For injunctive relief as provided by the Labor Code to the extent permitted by
20 law including, but not limited to, pursuant to Section 226(h), and Business and Professions
21 Code sections 17200, *et seq.*;

22 3. For restitution as provided by Business and Professions Code sections 17200,
23 *et seq.*;

24 4. For an order requiring Defendants to restore and disgorge all funds to each
25 affected person acquired by means of any act or practice declared by this Court to be unlawful,
26 unfair or fraudulent and, therefore, constituting unfair competition under Business and
27 Professions Code sections 17200, *et seq.*, to the extent available under law;

28 ///

1 5. For an award of unpaid wages, including minimum and overtime wages, to the
2 extent permissible by law to each affected person;

3 6. For an award of liquidated damages to the extent permissible by Labor Code
4 section 1194.2;

5 7. For an award of meal period premium wages equal to one hour of pay at the
6 employee's regular rate of pay for each workday that a meal period was not provided in
7 accordance with Labor Code sections 226.7 and 512 and Section 11 of the applicable IWC
8 Wage Order;

9 8. For an award of rest period premium wages equal to one hour of pay at the
10 employee's regular rate of pay for each workday that a rest period was not provided in
11 accordance with Labor Code section 226.7 and Section 12 of the applicable IWC Wage Order;

12 9. For reimbursement of unpaid business expenses incurred, in accordance with
13 Labor Code section 2802;

14 10. For penalties to the extent permitted pursuant to the Labor Code and Orders of
15 the Industrial Welfare Commission including, but not limited to, penalties under Labor Code
16 section 226(e);

17 11. For an award of waiting time penalties per former employee pursuant to Labor
18 Code section 203(a);

19 12. For an award of statutory penalties incurred under Labor Code section 226(e);

20 13. For an award of liquidated damages to the extent permissible under Labor
21 Code section 1194.2;

22 14. For damages under Labor Code section 558;

23 15. For civil penalties as described above pursuant to the PAGA, 75% of which
24 will be paid to the Labor Workforce Development Agency and 25% of which will be
25 distributed to the aggrieved employees;

26 16. For pre- and post-judgment interest to the extent permitted by law including,
27 but not limited to, Labor Code sections 218.6 and 1194;

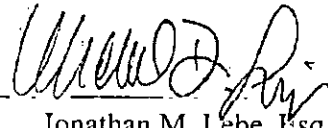
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1 17. For determination of the appropriate remedy to compensate Plaintiff, the
2 Plaintiff Class, and the Subclass Members, as required to promote fairness and justice,
3 including but not limited to establishing procedures for compensation, and fluid recovery if
4 appropriate; and

5 18. For such other relief as is necessary, equitable or just.
6

7 Dated: July 20, 2020

LEBE LAW, APLC
COHELAN KHOURY & SINGER

8
9
10 By:  _____
Jonathan M. Lebe, Esq.
Michael D. Singer, Esq.

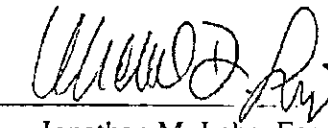
11
12 Attorney for Plaintiff Janine Mireles,
13 individually and on behalf of all others
14 similarly situated

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff demands a trial by jury on all claims so triable.

17 Dated: July 20, 2020

LEBE LAW, APLC
COHELAN KHOURY & SINGER

18
19
20 By:  _____
Jonathan M. Lebe, Esq.
Michael D. Singer, Esq.

21
22 Attorney for Plaintiff Janine Mireles,
23 individually and on behalf of all others
24 similarly situated
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